To: R1NewsClips[R1NewsClips@epa.gov]
From: Elliott, Rodney
Sent: Fri 9/18/2015 11:40:14 AM
Subject: Daily NEWSCLIPS- Friday, September 18th, 2015 r1newsclips

Report Overview:
Total Clips (49)
Air **(21)**
Brownfields / Superfund / Other Cleanups **(5)**
Budget/Recovery Act **(1)**
Climate Change **(6)**
Energy Issues **(4)**
Pesticides **(2)**
Research and Development **(2)**
Water **(2)**
Other **(6)**

Headline	Date	Outlet	Outlet State
Air (21)			
Yellowstone all in on clean energy project	09/17/2015	Advocate Online, The	CT
Environmental officials oversee jet fuel cleanup at Bradley	09/17/2015	Advocate Online, The	CT
Pilgrim nuclear plant officials mull whether to spend millions on safety upgrades	09/17/2015	Boston Globe Online	MA
State rejects waste transfer station proposed in Holbrook - The Boston Globe	09/17/2015	Boston Globe Online	MA
Jellyfish in art tell of the oceans' woes - The Boston Globe	09/17/2015	Boston Globe Online	MA
Pilgrim nuclear plant says it may shut down	09/17/2015	Boston Globe Online	MA
Brazil ethanol sales surge as economy crimps gasoline, diesel	09/17/2015	Boston.com	MA
How Green is Your City? New Global Analysis Reveals Extent of Trend to Cleaner Energy	09/17/2015	Boston.com	MA
Yellowstone all in on clean energy project	09/17/2015	Greenwich Time	CT

		Online	
STATES SAY 'E-ENTERPRISE' COULD BOLSTER RULEMAKING RELATIONSHIP WITH EPA	**09/17/2015**	**Inside EPA**	**VA**
ADVOCATES SAY COAL ASH RADIOACTIVITY STUDY HELPS JUSTIFY EPA RCRA RULE	**09/17/2015**	**Inside EPA**	**VA**
SAB BIOMASS CO2 PANEL FACES CRITICISM OVER PLAN TO BACK ECONOMIC MODEL	**09/17/2015**	**Inside EPA**	**VA**
D.C. CIRCUIT REJECTS STATE, INDUSTRY REQUESTS FOR 'EMERGENCY' ESPS STAY	**09/17/2015**	**Inside EPA**	**VA**
NAS CHAIR SEES 'BIG CHALLENGE' IN LACK OF QUANTITATIVE CLIMATE-HEALTH STUDIES	**09/17/2015**	**Inside EPA**	**VA**
EPA FIGHTS BACK ON IG REPORT FAULTING IMPLEMENTATION OF AIR LAW DECREES	**09/17/2015**	**Inside EPA**	**VA**
D.C. CIRCUIT WEIGHS MAJOR POLICY QUESTIONS FOR EPA SO2 AIR DESIGNATIONS	**09/17/2015**	**Inside EPA**	**VA**
EPA ACCELERATES EMPLOYEE HIRES AHEAD OF CONGRESS' BID TO CAP STAFFING	**09/17/2015**	**Inside EPA**	**VA**
ECOS EYES HELP FOR STATES ADOPTING EPA RULES, AVOIDS POLICY STATEMENTS	**09/17/2015**	**Inside EPA**	**VA**
DRAFT EPA AGGREGATION POLICY PROMPTS CRITICISM FROM INDUSTRY, ADVOCATES	**09/17/2015**	**Inside EPA**	**VA**
EPA WEIGHS NEW ENFORCEMENT FOCUS ON INDUSTRIAL WATER POLLUTION, SPILLS	**09/17/2015**	**Inside EPA**	**VA**
MCCARTHY VOWS TO 'PUSH THE ENVELOPE' ON RFS TO BOLSTER CLIMATE AGENDA	**09/17/2015**	**Inside EPA**	**VA**
Brownfields / Superfund / Other Cleanups (5)			
New Mexico official: EPA kept water data secret after spill	**09/17/2015**	**Advocate Online, The**	**CT**
New Jersey seeks to block appeal in Exxon settlement	**09/17/2015**	**Advocate Online, The**	**CT**

INHOFE EYES RENEWED PUSH FOR 'GOOD SAMARITAN' BILL AFTER EPA MINE SPILL	**09/17/2015**	**Inside EPA**	**VA**
EPA TARGETS VAPOR INTRUSION, PFCS AS FEDERAL FACILITIES CLEANUP PRIORITIES	**09/17/2015**	**Inside EPA**	**VA**
EPA Kept Water Data Secret After Spill	**09/17/2015**	**New York Times Online, The**	**NY**

Budget/Recovery Act (1)

Water picture for town improving	**09/17/2015**	**Hampton Union - Online, The**	**NH**

Climate Change (6)

Earth's record streak of record heat keeps on sizzling	**09/17/2015**	**Advocate Online, The**	**CT**
Powerful environmental group sues over pipeline - The Boston Globe	**09/17/2015**	**Boston Globe Online**	**MA**
Boston Medical Center aims to become city's 'greenest' hospital	**09/17/2015**	**Boston Globe Online**	**MA**
As if global warming weren't bad enough, it helps mosquitoes	**09/17/2015**	**USA Today Online**	**VA**
Climate Change, El Nino Make Hottest Year on Record a Good Bet	**09/17/2015**	**Washington Post Online**	**DC**
Global warming 'pause' never happened, scientists say	**09/17/2015**	**Washington Post Online**	**DC**

Energy Issues (4)

Energy chief reflects on 'Walden' and its message for his agenda	**09/17/2015**	**Boston Globe Online**	**MA**
National Science Foundation awards $1.2 million for science education in Boston area schools	**09/17/2015**	**Boston Globe Online**	**MA**
Firm looking to finalize Dover solar project Updated at 4:27 PM	**09/17/2015**	**Foster's Daily Democrat Online**	**NH**
STATES SUBJECT TO 'WATERS' RULE INJUNCTION UNCERTAIN ABOUT POLICY IMPACTS	**09/17/2015**	**Inside EPA**	**VA**

Pesticides (2)

Chemical spraying in Easton remains a mystery	**09/17/2015**	**Enterprise - Online, The**	**MA**
STATES SEEK WHITE HOUSE	**09/17/2015**	**Inside EPA**	**VA**

MEETINGS ON EPA WORKER PROTECTION RULE COSTS

Research and Development (2)

ADVISORS REITERATE CALL FOR EPA TO BOLSTER NOVEL SKIN CANCER RISK FOR BAP	**09/17/2015**	**Inside EPA**	**VA**
JUDGES FAULT EPA POLLINATOR FRAMEWORK IN RULING SCRAPPING NEW PESTICIDE	**09/17/2015**	**Inside EPA**	**VA**

Water (2)

WASTE GENERATOR, PHARMACEUTICAL RULE PROPOSALS PROMPT MIXED REACTIONS	**09/17/2015**	**Inside EPA**	**VA**
Stormwater problems tackled in Morristown	**09/17/2015**	**Stowe Reporter - Online**	**VT**

Other (6)

MWRA board supports water for SouthField	**09/18/2015**	**Enterprise - Online, The**	**MA**
Testing starts Sept. 28 at contaminated Hanover site	**09/18/2015**	**Enterprise - Online, The**	**MA**
Toxic blue-green algae closes Berkeley's Lake Anza	**09/17/2015**	**Advocate Online, The**	**CT**
You should really stop buying 'antibacterial' soaps	**09/17/2015**	**Eagle-Tribune Online, The**	**MA**
Northern Pass does not want hearings to be postponed	**09/17/2015**	**New Hampshire Union Leader Online**	**NH**
Cottages energy-efficient and more	**09/17/2015**	**Portland Press Herald**	**ME**

News Headline: Yellowstone all in on clean energy project |

Outlet Full Name: Advocate Online, The
News Text: ...edge of wildlife conservation is now being used as a model for harnessing renewable energy on-site. If all goes as planned, in a few...

Return to Top

News Headline: Environmental officials oversee jet fuel cleanup at Bradley |

Outlet Full Name: Advocate Online, The
News Text: WINDSOR LOCKS, Conn. (AP) — State environmental officials say emergency response workers are supervising a clean-up of jet fuel spilled...

Return to Top

News Headline: Pilgrim nuclear plant officials mull whether to spend millions on safety upgrades |

Outlet Full Name: Boston Globe Online
News Text: ...permanent shutdown. The Salem Harbor Power Station closed last year, while Brayton Point in Somerset is scheduled to stop operating...

Return to Top

News Headline: State rejects waste transfer station proposed in Holbrook - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...He said the transfer-station project would provide free curbside trash and recycling pickup for Holbrook residents, and noted 84 percent...

Return to Top

News Headline: Jellyfish in art tell of the oceans' woes - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...doing to the ocean that is bad for most marine organisms — overfishing, pollution, rising sea temperatures, acidification, coastal...

Return to Top

News Headline: Pilgrim nuclear plant says it may shut down |

Outlet Full Name: Boston Globe Online
News Text: ...permanent shutdown. The Salem Harbor Power Station closed last year, while Brayton Point in Somerset is scheduled to stop operating...

Return to Top

News Headline: Brazil ethanol sales surge as economy crimps gasoline, diesel |

Outlet Full Name: Boston.com
News Text: ...oil company Petrobras declined to cut gasoline and diesel prices, making biofuels more competitive. Meanwhile a slowing Brazilian economy...

Return to Top

News Headline: How Green is Your City? New Global Analysis Reveals Extent of Trend to Cleaner Energy |

Outlet Full Name: Boston.com
News Text: ...This year 308 cities are participating in CDP to better manage their climate change strategies. As part of the process, they have...

Return to Top

News Headline: Yellowstone all in on clean energy project |

Outlet Full Name: Greenwich Time Online
News Text: ...edge of wildlife conservation is now being used as a model for harnessing renewable energy on-site. If all goes as planned, in a few...

Return to Top

News Headline: STATES SAY 'E-ENTERPRISE' COULD BOLSTER RULEMAKING RELATIONSHIP WITH EPA |

Outlet Full Name: Inside EPA
News Text: NEWPORT, RI -- State officials say the imminent public launch of a website for a joint EPA-state "E-Enterprise" initiative to streamline environmental policy work could bolster states' relationship with the agency on developing regulations and options to reduce compliance burdens, such as electronic reporting and other measures.

The E-Enterprise effort has fostered "a very different kind of working relationship" between EPA and state environment officials that changed how the agency develops major rules, New Hampshire environment chief Tom Burack, the top state official on the E-Enterprise For The Environment Council, told Inside EPA during the Environmental Council of the States' (ECOS) fall meeting here earlier this month.

"What we've done for E-Enterprise has led to really a different working relationship,

a working relationship where it isn't just EPA deciding what needs to be done, scoping the problem, scoping the solution, and then going to the states and saying, 'Hey, we've designed a problem and a solution. Put your comments on it so we can then finalize the approach we've already decided.' That got rethought," Burack told Inside EPA.

The direct goal of the E-Enterprise project is to develop new tools for states and EPA to access and share data more easily, such as electronic reporting and joint federal-state databases of environmental information. A "web portal" -- a single site intended to provide "comprehensive" environmental information to federal, state and local regulators as well as regulated entities and the general public -- is slated to make its public debut in October.

At the Aug. 31-Sept. 2 ECOS meeting, Burack, acting deputy EPA Administrator Stan Meiburg -- the second co-chair of the E-Enterprise leadership council -- and other officials said that developing E-Enterprise projects has led to closer collaboration between federal and state officials on rulemakings and other actions that have little or no direct connection to information technology.

As proof of that shift, Burack pointed to EPA's new rules governing power plants' greenhouse gas (GHG) emissions, known as the Clean Power Plan. He also cited the agency's Aug. 5 update to the regulations governing states' Clean Water Act (CWA) water quality standards, both of which he said involved a level of outreach far beyond what states would have expected from the agency years earlier.

"I think the Clean Power Plan is an example of EPA doing a frankly unprecedented example of listening and outreach -- not just with the states, although it was very heavily with the states, to really understand the complexity and the challenges of dealing in a point of intersection across energy and environmental issues. . . . What we saw there, and what I think we'll see with other rulemakings across the country, is that kind of communication and collaboration starting to build," Burack said.

EPA made substantial changes to its power plant GHG policy between proposing the rules in 2014 and finalizing them on Aug. 3, including dropping energy-efficiency measures from its framework for setting state goals and incorporating a more regional approach to converting from coal-fired power plants to natural gas, among other shifts in how states will be expected to comply.

However, those modifications have been far from enough to win over states that have opposed the fundamentals of the power plan; even before the rules have been formally published in the Federal Register there are already multiple suits by state governments seeking to overturn them, including one joint case brought by a coalition of 15 states.

Meanwhile the final CWA rule, issued Aug. 5 but not yet published in the Register, has been much better-received by many state officials. It updates for the first time

since 1983 obligations for states' water quality standards, which states must craft to set water quality goals for each class of waterbodies within their borders.

The agency did not make major changes to its water rule between proposal and final action, but the changes it did make were generally aimed at satisfying states' requests for more flexibility and clearer definitions on new terms and mandates -- decisions that have drawn praise from state water officials.

"The rule is a great example of this cultural and philosophical shift that we're bringing about here. It shows the movement from a model of delegated federalism to one of more cooperative or even collaborative federalism. There's much more value for the perspectives and capacities that states bring to the table," Burack said.

However, despite EPA changing the rule in response to state comments, environmentalists' and industry's requests for significant revisions were uniformly rejected. Changes sought but denied included industry groups' arguments in their comments that the rule would be unlawful if not dramatically pared back. EPA's decision to reject those revisions could signal a potential legal challenge after the rule appears in the Register.

While the E-Enterprise project's co-benefits are valuable for regulators, officials involved with it are preparing for a greater public focus on its technical goals as the deadline for unveiling the web portal approaches.

The site, which has been under development since 2014, is intended to provide "comprehensive" environmental information to federal, state and local regulators as well as regulated entities and the general public.

Speaking at a Sept. 1 meeting of ECOS' E-Enterprise committee, EPA's Meiburg said at the meeting that when complete the portal will allow users to access more complete data on a wide variety of topics while also reducing the burden on regulators tasked with compiling such databases.

"We can build them once and use them as many times as we all care to use them," rather than state, local and federal officials pursuing separate but partly or entirely duplicative efforts, he said.

In a Sept. 11 telephone interview with Inside EPA, Martha Rudolph -- Colorado environment chief and new ECOS president -- called E-Enterprise a major issue for states facing limited resources to support the development and maintainance of electronic systems. "We see the need to continue to pursue this because of resource issues, programs becoming more complex, because it leverages what capacity we have," she said.

In pursuit of that goal, she said, the council, which represents many state environmental agencies, is focusing on "getting results" from the various E-

Enterprise projects, including field-testing a variety of technologies and sharing methods to "see what works" in making real efficiency improvements.

ECOS sees a need to "get some actions out there, show not we're not just talking about this, get efficiency measures established," she said. -- David LaRoss

Return to Top

News Headline: ADVOCATES SAY COAL ASH RADIOACTIVITY STUDY HELPS JUSTIFY EPA RCRA RULE |

Outlet Full Name: Inside EPA
News Text: Environmentalists say a recent study finding coal ash contains 7-10 times the concentration of radioactive material as unburned coal helps justify EPA's coal ash disposal rule -- which includes mandatory monitoring for radioactive water contamination -- and underscores the need to reject legislation that would overhaul and weaken the regulation.

"This has been an area that has needed research for a while, and has never been examined very closely by EPA. Now we have a peer-reviewed report that compares the levels of radioactivity in different coals," says one advocate in reference to the paper, "Naturally Occurring Radioactive Materials in Coals and Coal Combustion Residuals in the United States," which was published online Sept. 2 by the American Chemical Society (ACS).

In addition to finding that ash has up to 10 times the amount of radioactive material as unburned coal, the study also finds that ash contains between 3 and 5 times the radioactive material of average soil.

But sources in the utility and ash reuse industries say the ACS study mostly reinforces previous reports about coal's levels of the radioactive isotopes radium-226 and radium-228. That literature includes a 1999 EPA risk assessment on the hazards of coal ash exposure that the sources say addressed radiation risks, which factored into EPA's Resource Conservation & Recovery Act (RCRA) ash rule requiring ash facilities to monitor radium levels in groundwater and to take corrective action if the waste is found to be leaking radioactive material.

"EPA already does what the author suggested regulators do, and requires radium testing in the detection regime," the utility source says.

The reuse industry source adds that while industry sees no inaccuracies in the study, "The spin in the paper could lead to new misconceptions. . . . The question is whether the level of radium creates an exposure problem such that you can actually hurt someone, and all of the studies, including this one, have concluded that it's below actionable levels."

Environmentalists, however, are using the study to argue against legislation to revise the disposal rule that was passed recently by the House and is now pending in the Senate, which they say could undermine EPA's water monitoring mandate.

The House on July 22 approved H.R. 1734, a GOP-backed bill to revise and codify the ash rule while shifting enforcement authority to a state-led permitting regime instead of EPA's policy of national standards enforced through citizen suits. It would also make permanent the agency's decision to regulate ash as solid waste under RCRA subtitle D, rather than the stricter subtitle C hazardous waste rules sought by advocates.

It is unclear when the Senate might consider coal ash legislation.

Congressional Democrats, the White House and environmentalists have opposed the bill in part because it lacks a minimum standard of protectiveness state programs would have to meet, and advocates say the ACS study highlights the weakness of that approach.

"For some contaminants, if EPA has not set a maximum contaminant level for them in drinking water, this bill would allow states to set their own threshold with no requirement for how protective it needs to be, and radium is one of those. This report speaks directly to why the EPA rule is needed, and why the bill would not provide adequate protection for drinking water," the environmentalist says.

A Sept. 3 blog post by the environmentalist law firm Earthjustice says the study also calls into question the RCRA rule's lack of groundwater monitoring standards for "structural fills," in which ash is used to fill in an open site such as a former mine.

"While the EPA's new coal ash rule will require monitoring of groundwater for radium 226 and 228, a loophole in the new rule will still allow coal ash fill sites to go unmonitored -- no matter the size of the fill. It's abundantly clear that the use of thousands of tons of coal ash without testing or monitoring can endanger the communities that live around -- or on top of -- these fill sites," the post says.

Meanwhile, the pending lawsuits over the ash rule could also lead to scaling back its groundwater protections. Power companies recently signaled that they will ask the U.S. Court of Appeals for the District of Columbia Circuit to scale back or eliminate the rule's groundwater protection provisions, which could include the radium monitoring and remediation requirements.

In a joint non-binding statement of issues filed Aug. 17 by several utilities in consolidated litigation over the rule, they questioned EPA's legal authority to require facilities to "address" releases of contaminants to groundwater and to mandate corrective action for leaks without consideration of costs.

The utilities also listed as in doubt EPA's legal authority to regulate closed, or legacy, ash impoundments at active power plants and to mandate a host of requirements for facility closure, including restrictions on when an impoundment qualifies for a more lenient "alternative closure" process.

Environmentalists suing to strengthen the rule did not list radium protections in their statement of issues. Instead, they are targeting the agency's decision to regulate only legacy ash impoundments at active power plants rather than applying the rule to all legacy sites; a rule provision allowing existing impoundments with a single liner of compacted soil to continue operating without new protections; and the fact that the rule does not require monitoring for boron in addition to other potential groundwater contaminants. -- David LaRoss

Return to Top

News Headline: SAB BIOMASS CO2 PANEL FACES CRITICISM OVER PLAN TO BACK ECONOMIC MODEL |

Outlet Full Name: Inside EPA
News Text: Environmentalists are criticizing a decision by an EPA Science Advisory Board (SAB) panel to explicitly endorse use of an economic model to craft future policy-specific assessments of whether biomass carbon dioxide (CO2) emissions are considered carbon neutral, warning the move will encourage more trees to be cut down for energy without guaranteeing that their emissions will be re-sequestered through future forest plantings.

The SAB panel Sept. 2 largely completed its long-running work to provide advice to EPA on how to assess biomass CO2, with members agreeing to finalize their Aug. 27 draft report with a few edits, and to forward it to the full SAB for approval.

The draft generally supports EPA's document that laid out a series of formulae for determining the CO2 impact of a biomass feedstock, while retaining criticism that the agency's approach lacked a policy context and endorsing an alternative forest carbon stock approach rather than EPA's emissions approach.

At the meeting, SAB panelists also agreed to add specific support for an economic model, known as the Forest & Agricultural Sector Optimization Model, as opposed to an ecological model that environmentalists favored, to project the impacts of a biomass policy on future forest carbon stocks.

The difference between the two types of models is that economic models can include assumptions about human behavior while ecological models do not. Environmentalists argue that economic models conclude that a bioenergy policy will promote tree planting and future forest carbon sequestration without evidence to support such planting will occur.

But panelist Roger Sedjo of Resources For the Future urged the SAB panel to add the language endorsing the economic model, arguing that they favored a model that considers "human responses" to a system rather than no human responses. The way to assess those responses is to use an economic model that "has an investment component . . . and is related to what's happening to the basic ecosystem. . . . It won't take a lot to put in a few sentences rationalizing the appropriateness of an economic approach," Sedjo said on the call.

Panel chair Madhu Khanna of the University of Illinois and panelist Steve Rose of the Electric Power Research Institute agreed.

Even though the SAB endorsed the economic model approach -- which would help justify EPA's and industry's stance that at least some biomass is carbon neutral due to re-growth -- industry has nonetheless criticized the agency's document as overly complicated for use in a regulatory context such as its CO2 rule for power plants.

One industry source adds that the use of models to craft policy is questionable because they can be calibrated to produce any outcome.

In the power plant rule, issued Aug. 3, EPA generally endorsed use of biomass but deferred specific decisions on what types of biomass are carbon neutral and eligible to be used for compliance -- taking comment on the issue as part of its proposed federal implementation plan.

In calling for adding an economic modeling rationale to the SAB report, Sedjo and the other panelists were responding to criticism by Tim Searchinger of Princeton University and the World Resources Institute, who urged the panel to drop the economic model in favor of an ecological one. -- Dawn Reeves

Return to Top

News Headline: D.C. CIRCUIT REJECTS STATE, INDUSTRY REQUESTS FOR 'EMERGENCY' ESPS STAY |

Outlet Full Name: Inside EPA
News Text: A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit has rejected requests from states and a coal mining firm for an emergency ruling blocking all deadlines in EPA's greenhouse gas (GHG) rule for existing power plants, finding they had not met the "stringent" standards for such requests.

In a brief Sept. 9 order, the panel -- consisting of Judges Karen Henderson, Judith Rogers and Thomas Griffith -- cited legal precedent to indicate that the petitioners had not met the legal test for such requests. The order is available on

"Petitioners have not satisfied the stringent standards that apply to petitions for extraordinary writs that seek to stay agency action," citing the 1985 D.C. Circuit ruling in Reynolds Metals Co. v. FERC and the 1977 D.C. Circuit ruling in Washington Metro Area Transit Commission v. Holiday Tours, Inc.

Opponents of the rule filed the novel challenges even before the rule was published in the Federal Register -- the point at which routine challenges to regulations can commence -- arguing that the states face a date-certain deadline of Sept. 6, 2016, to submit an "initial" compliance plan, even though they cannot yet file suit over the rule.

While states could ask the full appellate court to reconsider the ruling, the move appears to pave the way for opponents of the final existing source performance standards (ESPS) to file a traditional petition for review after the rule is published in the Register, which EPA says will occur by mid-to-late October.

A coalition of 15 states led by West Virginia in a recent brief in the suit, In Re: State of West Virginia, et al., cited a "massive effort" that they must undertake "immediately" to begin complying with the ESPS, arguing they are already suffering "irreparable harm," a key threshold for persuading the court to stay the rule's deadlines.

The coal mining firm Peabody Energy made a similar request for an emergency writ blocking the rule's deadlines, and the court later consolidated the two requests (Inside EPA, Sept. 4).

Although the court rejected the novel requests for an "emergency" stay, the state and Peabody filings could preview arguments that ESPS opponents could make in subsequent motions to stay the rule.

EPA and its supporters in Aug. 31 briefs had argued that the states do not face irreparable harm because the requirements for the initial plans are "minimal" and states can opt not to submit a plan at all and instead become subject to a federal implementation plan.

As part of its filing, the agency also noted that it expects Register publication of its suite of power plant GHG rules -- including the ESPS and a companion rule for new power plants -- will occur by mid- to late-October, which will trigger a 60-day window to file suit over the rules.

Return to Top

News Headline: NAS CHAIR SEES 'BIG CHALLENGE' IN LACK OF

QUANTITATIVE CLIMATE-HEALTH STUDIES |

Outlet Full Name: Inside EPA
News Text: Dan Greenbaum, chair of the National Academy of Sciences (NAS) panel that reviewed the Obama administration's recent report on the risks that climate change presents to human health, sees changing policy without quantitative risk assessments -- a recurring situation in the report, where many topics lack the necessary data -- as "a big challenge" that could hamper future policy development.

For many of the climate-related health effects described in the U.S. Global Change Research Program (USGCRP)'s report -- written by an interagency group including EPA -- there isn't enough information to provide quantitative assessments, Greenbaum said in a recent interview, adding that it is hard to change policy without such quantitative analyses, even though human health impacts are a major driver for policy change.

And there is also risk to getting in front of what data exists, he said.

"The underlying theme for [the NAS panelists] is that health issues are important. [They're one of the] biggest drivers for policy change," Greenbaum said.

But, "you can get out on a limb, and people will come after you and saw off the limb," said Greenbaum, who is the president of the Health Effects Institute, an air quality research group that is jointly funded by EPA and the automobile industry.

Complicating the lack of data is the fact that climate-related risk analyses are better addressed as cumulative risk assessments rather than traditional single pollutant risk assessments used for regulatory purposes, Greenbaum said. "It is not a simple task to predict quantitative . . . impacts climate will have on some of these things," he said.

But cumulative risk assessment methodology is still developing, and the practice is far more complicated than single pollutant assessments. EPA, for example, continues to grapple with these issues.

While the agency's pesticides office (OPP) has legislative requirements from the Food Quality Protection Act of 1996 that it consider multiple chemical exposures in its assessments, other parts of the agency do not.

And some consider OPP's multi-chemical assessments to be lacking, because they include other pesticides that have common mechanisms of toxicity, but do not consider anything beyond that, such as non-chemical stressors that can also affect individuals.

EPA's Risk Assessment Forum, an agency-wide body of risk assessment experts, continues to toil over a decade-long cumulative risk guidance document.

Greenbaum argued that it is important to further bolster the USGCRP document's credibility by transparently explaining choices that agencies' staff made, in part because of the challenge of performing quantitative assessments on so many aspects of the report.

For example, Greenbaum pointed to the NAS panel's recommendation that EPA and the other agencies explain why the included health effect examples were selected, and the level of certainty or evidence for various predictions. "It's important to the credibility of the document -- how did they pick the health outcomes they focused on," Greenbaum said. "For the most part [the NAS panel] didn't disagree [with the examples selected] but ... they need to do a better job of [explaining] the criteria." In fact, Greenbaum could think of just one case where the NAS panel disagreed with the agencies' selections of diseases or health effects to include in the report: Legionnaire's Disease.

Greenbaum added that another way to bolster the report's transparency and credibility is for its authors to rank the level of evidence behind its examples as low, medium and high.

The draft USGCRP report, released earlier this year, projects "thousands to tens of thousands of additional deaths each year from heat in the summer" due to climate change -- offset partially by fewer deaths in cold months -- as well as changing weather conditions that are "increasingly conducive" to ground-level ozone formation that will stress EPA and states' air quality efforts.

The document's nine chapters examined available literature on a range of possible adverse climate impacts on human health, including from changes in air and water quality, increased temperature, and other factors.

The draft concluded that climate change threatens human health in two ways -- "by changing the severity or frequency of health problems that are already affected by climate and weather factors" and also "by creating unprecedented and unanticipated health problems or health threats in places where they have not previously occurred," according to an executive summary of the report (Inside EPA, July 31).

The document has already been cited by top White House officials to justify EPA's pending GHG controls.

Greenbaum's comments follow criticism on the report from environmental and public health groups, who argued that the report was insufficiently hard-hitting, failed to provide enough quantitative assessments and did not provide policy recommendations.

But Greenbaum largely praised the report, and defended it from its detractors.

He said that the administration strictly narrowed the report scope to preclude policy

recommendations, and that its authors "did a great job on [the] quantitative analyses" that they did undertake, such as risks from ozone and heat 15-20 years in the future.

He added that there were areas with the "best data" where the agencies "did a really good job" with their analyses, such as work addressing heat, air quality -- especially ozone --vector-borne diseases like Lyme disease and water borne diseases.

But he also noted criticisms from some groups, including the Cato Institute, the American Petroleum Institute and the Utility Air Regulatory Group, who argued in their comments on the draft report that the agencies could better address uncertainties regarding adverse health impacts from higher temperatures. Inside EPA acquired the comments through a Freedom of Information Act request.

"We had some comments on how to do that better and how to capture uncertainty better," Greenbaum acknowledged. Still, he said, the report contains "some hard numbers in the document about premature deaths because of heat."

Specifically, the commenters argued that newer data show heat-related deaths falling, even during heat waves, and argued that humans' abilities to control their own climates with heating and air conditioning alleviated this concern.

Greenbaum, however, was unconvinced by the argument. "We came out pretty strongly [in the report]: talk more about adaptive behavior. It's not simple to do that," he said. "Heat wave deaths are down not because there have been less heat waves but because public health officials are responding. That's not a long-term solution. . . . You can get pretty quickly to equity issues in who gets access to air conditioning."

Greenbaum added that heat waves are "an area where people talk not about adaptation, but talk about mitigation . . . we're almost certainly not going to act soon enough to avoid adaptation." -- Maria Hegstad

Return to Top

News Headline: EPA FIGHTS BACK ON IG REPORT FAULTING IMPLEMENTATION OF AIR LAW DECREES |

Outlet Full Name: Inside EPA
News Text: EPA is fighting back against a report from its Inspector General (IG) that finds the agency is failing to correctly implement major consent decrees (CDs) reached with industries to settle Clean Air Act enforcement actions, saying that while it agrees partially with a need to better monitor the decrees the IG is overstating the problems highlighted.

The dispute over the adequacy of EPA's implementation of CDs became public on the same day that the agency announced a major settlement with Duke Energy to

resolve claims that several of the company's coal-fired power plants in North Carolina violated Clean Air Act permitting requirements. But the IG outlined its concerns, and EPA flagged its push-back in a report that assessed three existing CDs with companies.

In the report publicly released Sept. 10, the IG says EPA has consistently failed to ensure that all the terms of air law CDs entered into by the agency and polluters are being met. The IG says, "The EPA has not ensured that facilities were complying with several key terms of the three CDs we reviewed. EPA regional enforcement files were missing key CD deliverables as well as other documents required by the CD." Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 184737)

The IG says that it made six recommendations for corrective action ranging from "updating and reissuing guidance for regional monitoring of CDs and termination procedures to requiring the use of a monitoring system to track CD compliance," but EPA disagreed with three of the six recommendations and those are deemed unresolved.

"[A]s a threshold matter, while we agree that settlement agreement monitoring can be strengthened, EPA does not believe" that the examples cited in the IG report, and which were based on a review of just three Clean Air Act settlement agreements, "demonstrate the existence of a national problem, or that EPA does not have sufficient management controls to ensure that facilities are complying with the terms of their settlement agreements," EPA enforcement chief Cynthia Giles wrote in a June 11 response to an earlier pre-publication draft of the report.

The report, "EPA Can Reduce Risk Of Undetected Clean Air Act Violations Through Better Monitoring of Settlement Agreements," was based on research into the agency's handling and tracking of three CDs, covering six industrial facilities, owned by cement maker Lafarge, electric utility American Electric Power (AEP) and sulfuric acid maker Rhodia, now known as Eco Services Operations LLC.

In addition to finding EPA did not ensure compliance with the CDs, the IG says, "CD requirements were not always incorporated into facilities' permit[s] as required by the CD and potential CD violations were not addressed. The EPA did not have sufficient management controls to ensure that these facilities were complying with the terms of their CDs."

Specifically, the IG alleges that the EPA regional offices with responsibility for ensuring the implementation of the CDs in question "have not implemented automated systems for tracking compliance with CD requirements in accordance with the EPA's guidance for the selected industries." EPA's guidance, the IG says, is unclear on how regional staff should monitor CDs, "provides only vague guidance on what specific documents to include in the CD enforcement file," and lacks specific procedures for terminating CDs.

The IG also reports that EPA's Office of Enforcement and Compliance Assurance stated to the IG that "it has chosen to focus its resources on addressing new violations not under CDs."

The IG recommends that EPA revise its guidance to regional offices, by making changes to its "Manual on Monitoring and Enforcing Administrative and Judicial Orders" in order to provide regional agency staff with advice on how to avoid the shortcomings identified. EPA should clearly define which region has the lead in monitoring settlements that cover facilities in several different agency regions, the report says.

Also, the IG says EPA should develop a better system for monitoring settlements. The IG further makes specific recommendations about the implementation of the three settlements it examined.

In her June 11 response to the IG, Giles cites what she says are misconceptions. For example, CD requirements "do not depend on incorporation into a permit in order to be applicable and enforceable requirements at a facility," as the requirements "are independent and directly enforceable in the absence of a permit."

Further, the purpose of incorporating CD requirements into air permits "is to ensure that the consent decree-based limits continue to apply after termination of the decree," according to Giles.

Nor can there be a "delay" in including the terms of a CD into a permit, as the IG alleges, because "consent decrees can only require that all relevant permits are in place by the time of termination," she says.

EPA accepts, however, the IG's recommendation that EPA clarify which is the lead regional office with oversight of multi-regional CDs.

The IG includes in the report its responses to EPA's critiques, saying, "Although we selected just three CDs and two facilities from each of these CDs for a total of six regional enforcement files, we found problems with each of these six regional enforcement files from three regions."

Further, "We recognize that CDs do not contain deadlines for incorporating CD requirements into permits. However, we believe there is the expectation that the CDs' emission limits and requirements will be incorporated into the facilities' air permits, including Title V [operating] permits, in a timely manner because the CDs we reviewed contain deadlines for submitting permit applications to the appropriate permitting authorities and the EPA," the IG says.

The IG says it recognizes EPA's need to prioritize its resources on violations not covered by CDs, but "We continue to believe that monitoring and oversight of CD

compliance needs improvement," because the agency's tracking of required documents under CDs is still inadequate. EPA in its June 11 letter defends its tracking system, which it says it developed in response to an earlier audit.

Meanwhile, EPA Sept. 10 announced its major new CD with electric utility Duke Energy Corporation over alleged Clean Air Act violations by several of the company's coal-fired power plants in North Carolina.

The agency in a statement says the CD "resolves long-standing claims that Duke violated the federal Clean Air Act by unlawfully modifying 13 coal-fired electricity generating units located at the Allen, Buck, Cliffside, Dan River, and Riverbend plants, without obtaining air permits and installing and operating the required air pollution control technologies."

The agreement ends years of litigation and comes after the company closed 11 of the 13 electrical generating units at issue. The deal further requires Duke to operate the remaining two units of the 13 with emissions controls until they also shut down, and also to retire another unit at the Allen plant, spend a total of $4.4 million on environmental mitigation projects, and pay a civil penalty of $975,000. Co-plaintiffs in the case with EPA were Environmental Defense, the North Carolina Sierra Club, and Environment North Carolina.

The settlement was lodged with the U.S. District Court for the Middle District of North Carolina and is subject to a 30-day public comment period and final court approval.

Michael Regan, senior director at Environmental Defense Fund and former EPA manager, in a Sept. 10 statement said that, "This decision is another turning point for clean energy solutions. . . . It's been a good opportunity to work collaboratively with the Department of Justice and the Environmental Protection Agency to see that our laws are upheld and that the health of our families is defended and improved." -- Stuart Parker

Return to Top

News Headline: D.C. CIRCUIT WEIGHS MAJOR POLICY QUESTIONS FOR EPA SO2 AIR DESIGNATIONS |

Outlet Full Name: Inside EPA
News Text: Appellate court judges at Sept. 16 oral arguments grappled with major policy questions that could set important precedent on how EPA makes designations for areas attaining or in nonattainment with its sulfur dioxide (SO2) ambient air standard, including the data the agency can rely on and the sources it assesses in making the findings.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit weighed those questions in Treasure State Resource Industry Association (TSRIA) v. EPA, which consolidates suits over EPA's attainment decisions for its 2010 one-hour national ambient air quality standard (NAAQS) of 75 parts per billion (ppb).

Other fights over the SO2 designations process are still pending, including a 9th Circuit case in which several states are faulting a consent decree that would set a schedule the states say is too slow for classifying areas for which the agency is yet to issue a designation of either attainment or nonattainment for the SO2 standard.

Industries oppose such findings because nonattainment status requires states to impose potentially costly air pollution reduction measures on sources of SO2, which critics say discourages investment in such areas.

In the TSRIA case, Judges Thomas Griffith, Patricia Millet and Stephen Williams heard a novel claim from a Michigan steelmaker saying EPA should have also designated part or all of a neighboring county nonattainment to include a power plant that the steel producer says is partly responsible for high SO2 readings at a local school.

U.S. Steel Corp., which has a plant located in Wayne County, MI, says that EPA ignored SO2 emissions from a power plant in neighboring Monroe County when designating Wayne County nonattainment for the 2010 NAAQS.

The Monroe Power Plant contributes significantly to the nonattainment of Wayne County, and had EPA expanded the Wayne County nonattainment area to include the power plant, this might reduce the regulatory burden on U.S. Steel, attorney for the company Douglas McWilliams said at arguments.

The company asks the court to vacate EPA's nonattainment designation, which it claims is "arbitrary and capricious," and remand the issue back to the agency for redesignation.

The case is unusual because U.S. Steel seeks to overturn the Wayne County designation based not on air quality, as all parties concede that Wayne County monitoring indicates nonattainment with the 75 ppb standard.

Instead, the company wants the finding overturned based on EPA's failure to designate a larger area as nonattainment. This raises questions with respect to U.S. Steel's standing, judges said at arguments, because it is unclear whether the company can demonstrate a clear injury that can be redressed by expanding the nonattainment area.

Department of Justice (DOJ) attorney Amanda Berman for EPA said that because Wayne County is clearly in nonattainment, U.S. Steel will be subject to Clean Air Act regulatory requirements applicable to nonattainment areas regardless of the

status of other areas. Berman said that DOJ sees issues of "causation" and "redressability."

Judge Williams noted, however, that reasonably available control technology -- a level of pollution control required by the Clean Air Act -- requires that states apply controls only to the extent that their nonattainment areas attain the NAAQS. Therefore, it is possible that burden-sharing between U.S. Steel and the Monroe Power Plant with respect to emissions reductions would result in a lighter regulatory burden for the steel maker.

DOJ's Berman, however, said it is up to states to ensure that their nonattainment areas attain the NAAQS, and that regulators in Michigan could opt to require more controls on the Monroe plant.

EPA is still examining the issue of whether Monroe County should be designated nonattainment, Berman said, which the judges acknowledged also raises issues of "finality." If EPA's determination with respect to Monroe County is not final, U.S. Steel cannot now pursue litigation over the issue, DOJ argues.

On causation, Berman contradicted data from U.S. Steel, sourced from Monroe plant owner DTE, that shows that emissions from the power plant actually affect the air quality at the school close to the steel plant. "There is no evidence in the record" to show that the utility's emissions actually cause the NAAQS violation in Wayne County, Berman said, noting an area between the plant and U.S. Steel's facility that is currently in attainment with the NAAQS. U.S. Steel claims that meterological factors carry Monroe County emissions to the Wayne County monitoring site.

The judges also heard a dispute filed by industry and labor interests challenging a nonattainment designation for an area in Montana. These groups claim EPA in issuing the Montana designation violated its own data quality guidelines in order to designate part of the state nonattainment,

Attorney William Mercer argued for TSRIA, an industry and labor group, that the court should vacate EPA's nonattainment designation for the Billings, MT, area, because the air monitoring data EPA relied on were old and do not comply with the agency's own standards for data quality.

Seeking to avoid the courts' traditional deference to federal agencies on technical questions within their areas of expertise, Mercer insisted that "this case is not about EPA's exercise of its technical expertise." Rather, EPA failed to follow its own guidelines that data be of "adequate quality," among other criteria, Mercer said.

Mercer said that in addition to problems with the quality of some of the data, EPA imposed unlawful retroactive regulation on Montana by using a data set that predates the introduction in 2010 of the 75ppb one-hour NAAQS.

Judge Griffith pressed Mercer on when TSRIA raised its full list of data quality objections, and Mercer conceded that the full list was not included in proceedings until the group filed its petition for administrative reconsideration with EPA. This is significant because DOJ's Berman said the group failed to raise its objections with sufficient specificity during the public comment period on the area designation, hence failing to meet an air law requirement for a subsequent legal challenge to proceed.

The three judges also pushed back on the notion that EPA wrongly placed the area in nonattainment retroactively because of its use of "old" data. Mercer claimed that because it has adverse regulatory consequences for an area, a nonattainment designation cannot rely on old data, but a designation of "attainment" or "unclassifiable" can.

Berman replied for DOJ that there is no issue of retroactivity, and that the timing of the NAAQS designation process laid out by the air law in fact necessitates the use of data predating an update in a NAAQS standard.

The arguments over EPA's process for defining nonattainment areas come amid an ongoing dispute over the agency's whole approach for SO2 designations under the NAAQS.

The agency has fallen years behind schedule in the designation process, largely because of an argument with certain states and industry over to what degree they should rely on air quality modeling to determine SO2 NAAQS compliance. EPA initially preferred modeling to monitoring, but then backtracked when faced with opposition.

The agency is allowing states that wish to use a redesigned air quality modeling network instead to do so, but creating the new networks is taking time. EPA is subject to a consent decree schedule agreed with environmentalists for issuance of the remaining designations that gives EPA until the end of 2020 to complete designations, far beyond the three years allowed by the air law following issuance of a new NAAQS standard.

EPA initially designated only 29 areas of the country "nonattainment," and will wait to designate many more, but in ongoing legal proceedings a group of states say this remains unlawful and the agency must designate remaining areas either "attainment" or "unclassifiable" without further delay.

Arizona, Kentucky, Louisiana, Nevada, North Dakota and Texas are appealing the consent decree in the 9th Circuit, saying EPA is still violating the Clean Air Act by failing to designate most of the country within the three years.

In an Aug. 10 brief, these states say that, "The Consent Decree requires EPA to act in excess of its statutory authority, enacts new regulation of the designation process,

imposes extra-statutory obligations on the Appellant States who were not a party to the decree, and is the product of an improper application of law." The brief is available on Inside EPA.com. See page 2 for details. (Doc. ID: 184893)

Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Michigan, Nebraska, Ohio, Oklahoma, South Carolina, West Virginia, Wisconsin and Wyoming are also amici in the case.

Response briefs are due from EPA and environmentalists Oct. 13. -- Stuart Parker

Return to Top

News Headline: EPA ACCELERATES EMPLOYEE HIRES AHEAD OF CONGRESS' BID TO CAP STAFFING |

Outlet Full Name: Inside EPA
News Text: EPA is stepping up its focus on hiring in order to replenish staffing levels after buyouts left the agency with roughly 800 fewer employees than its budget allows -- but is facing concerns from its union about the plan, while Republicans in Congress look to impose a cap on EPA staffing at a level that the agency's hires could ultimately exceed.

The agency is currently operating with a full time equivalent (FTE) level of 14,493 and is engaging in a round of hires expected to bring it up to 14,900 FTEs. But EPA wants to eventually attain its currently appropriated staffing level of 15,335 -- setting it up for a clash with the GOP which wants to set a limit of 15,000 FTEs total.

Republicans hope to use EPA's pending fiscal year 2016 appropriations legislation as a vehicle to impose that cap, but there is lingering uncertainty about how lawmakers will resolve an impasse over funding bills. A government shutdown looms if Congress fails to approve a spending bill by Oct. 1, when FY15 appropriations expire.

Further complicating the issue is push-back from the American Federation of Government Employees' (AFGE) Council 238, which represents many EPA staff and is criticizing the agency for moving too fast with its hires. AFGE argues that the accelerated hiring will not ensure that the new employees received the right training.

Under FY15 appropriations, EPA is allowed up to 15,335 FTEs -- although President Obama in his proposed FY16 budget would boost that figure to 15,373.3 FTEs. House Republicans in pending FY16 legislation are seeking to cut it to 15,000 through their proposed appropriations bill, which would be the lowest staffing cap for EPA since 1989. While the Senate is also seeking a budget cut for EPA, its bill does not clearly set a staffing level.

EPA is looking to use its existing FY15 budget, which is $8.13 billion, to hire more FTEs before FY16 begins Oct. 1. Under a May 15 memo from Deputy EPA Administrator Karl Brooks, head of the Office of Administration and Resources Management (OARM), the agency has been accelerating its hiring process to add 500-800 new employees before the last day of FY15, which is Sept. 30, hoping to reach a goal of 15,000 FTEs.

As of Sept. 15, an EPA spokesman says it has nearly met the 500-hire goal, but resignations and retirements will keep total staff under 15,000 FTE -- which is the cap that Republicans are seeking.

"As of Sept. 2, 2015 the EPA had 14,493 on-boards. The EPA expects this number to reach 14,951 by the end of the month once several hundred selections have been made and non-competitive appointments are completed. The new hires made are going all over the agency and are at a variety of grade levels. However, the agency expects approximately fifty employees will choose to depart or retire by the end of September. With both numbers taken into account, EPA expects to have 14,900 full time staff at the start of the new fiscal year on October 1," the spokesman says.

Regardless, the agency is now below even the 1989 figure in terms of actual staff thanks in part to a series of buyouts and early retirement offers for long-time EPA employees that the agency used to achieve payroll reduction goals in 2013 and 2014 -- prompting the current hiring push to restore some FTEs.

An environmentalist tracking EPA's budget moves says a wave of new employees is unlikley to bring EPA back up to "full strength" because it involves replacing experienced staff with recent hires.

"If you have more people with more experience, and then you lose that and bring on people who haven't developed that know-how, that's not a one-for-one replacement," the environmentalist says.

However, the source adds that the difference in experience levels could also insulate EPA against an FY16 budget cut because the new staff will generally receive less pay.

The agency's push to quickly return to full staffing has met resistance from its own employee unions, who have argued that the speedy hiring procedures OARM has adopted for the new FTEs do not allow adequate time for training, or for managers to properly assess their personnel needs.

For example, Karen Kellen, president of the AFGE Council 238 sent a June 5 letter to agency Administrator Gina McCarthy that urged a less-aggressive hiring process with longer planning and training periods.

"[T]he Union fully supports the Agency in its quest to employ a highly skilled and

effective workforce. This is critical to meeting our mission of protecting human health and the environment. However, this should not be at the expense of the existing workforce. Nor should it occur without a workforce analysis. This is human resources management in a vacuum," Kellen wrote. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 184894)

Meanwhile, legislators are continuing to spar over how to fund EPA and other federal agencies in FY16. A continuing resolution (CR) maintaining current levels into at least November or December is seen as an all-but-certain stopgap until Republicans, Democrats and the White House can reach an agreement. Such a pact could force further changes to EPA's staffing levels and other expenditures.

President Obama and congressional Democrats have insisted on legislation that would lift the discretionary spending caps known as sequestration, as well as ditching policy riders that would block major EPA rules.

"We know these proposals are dead on arrival for Democrats, and even if passing the Congress, would be vetoed by the president," Rep. Nita Lowey (D-NY), ranking member on the House Appropriations Committee, said during a Sept. 16 press call. "We're ready -- ready to sit down, ready to negotiate. . . . if they haven't come up with a strategy yet, let them come forth with a clean continuing resolution, and let's get it passed."

A source at the National Priorities Project, a nonprofit focused on budget issues, says a CR is expected to last until late November or December.

The House's scrapped FY16 EPA funding bill would cut the agency's existing $8.13 billion budget by $718 million and bar the agency from implementing a suite of regulations such as its contentious Clean Water Act (CWA) jurisdiction rule and the newly finalized Clean Power Plan greenhouse gas (GHG) standards for existing power plants, as well as its imminent rule that could revise EPA's ozone standard.

The Senate bill would impose a $538 million cut to the agency's budget and would also block the CWA and ozone rules -- though it would not block the power plant GHG rule, instead allowing states to opt out of it.

However, neither bill seems likely to receive a vote. House lawmakers pulled their FY16 legislation indefinitely due to a fight over amendments on whether the Confederate flag should be prohibited from flying on federal land, while Senate Democrats are blocking any spending bill that includes sequestration.

With no live spending bill backed by their party leadership, the Republican Study Committee, a group of conservative House GOP members, has put forward an omnibus FY16 spending bill termed the "Responsible Spending And Accountability Act" that would enact spending limits and policy riders from all of the pending House appropriations bills, along with a set of new riders targeting the health care

law, Planned Parenthood, and Iran sanctions.

At the same time, House Democrats on Sept. 16 proposed the "Prevent a Government Shutdown Act of 2015," which would establish a bipartisan, bicameral select committee to negotiate a budget deal, but would automatically raise spending caps in line with the White House's proposed spending levels for FY16 -- which included a $452 million funding boost for EPA -- if no agreement is reached by Oct. 1. -- David LaRoss

Return to Top

News Headline: ECOS EYES HELP FOR STATES ADOPTING EPA RULES, AVOIDS POLICY STATEMENTS |

Outlet Full Name: Inside EPA
News Text: The Environmental Council of the States' (ECOS) new president says the group is ramping up its focus on how to help states assess the impacts of increasingly complex EPA regulations on a state-by-state basis rather than trying to reach consensus among ECOS' many members on controversial agency climate, water and other rules.

In an exclusive Sept. 11 interview with Inside EPA, ECOS President Martha Rudolph -- who is also the Colorado Department of Public Health and Environment (CDPHE) director -- said the group is focused on breaking down a policy's requirements to help states better understand what an EPA rule will mean for states' programs, how regulations will be implemented and how to minimize impacts, especially given ever-dwindling state resources.

ECOS has long been providing state agencies with "very compelling and instructive services," said Rudolph, who was elected ECOS president at the group's recent Aug. 31-Sept. 2 fall meeting in Newport, RI.

"That's what we're focused on now when we have thorny, really complicated issues," she said, with states split over whether to back or oppose major EPA regulations including the Clean Power Plan existing source performance standards (ESPS) climate rule for power plants and the final rule to determine Clean Water Act (CWA) jurisdiction.

ECOS represents state environmental agencies and several states are challenging the CWA rule in court, with separate challenges expected once EPA publishes the utility greenhouse gas rule in the Federal Register. But other states that are members of ECOS have expressed support for the two flagship Obama EPA policies.

"At one point, ECOS did try to get consensus on issues," but as rules grow more complex, some environmental policies have become more divisive, and struggling to

reach a cohesive policy position could mean that "whatever consensus we are able to reach may not be relevant," limiting its utility, Rudolph said. She cited as examples the June 29 final rule to define CWA jurisdiction and the agency's climate rules for utilities.

As a result of the difficulty in reaching policy consensus on controversial EPA rules among ECOS' diverse members, Rudolph said she will instead ensure ECOS focuses on the rule's implementation impacts on states.

For example, ECOS will likely not draft a specific policy position on EPA's recently proposed methane air rules, which would set new emissions standards for the oil and gas sector's new and modified sources, but instead the group's shale gas caucus will focus on potential impacts for states.

"The caucus may analyze the rules, start working with members on what do the rules say, what do they require," Rudolph says. The group may opt to provide comments to EPA that emphasize the states' role as partners in implementing the Clean Air Act and that the agency should frequently consult with states on "what's reasonable to achieve" and realistic in terms on states' funding levels.

ECOS is also focusing on leveraging its relationships with federal agencies, expanding collaborative existing efforts with the Department of Defense and Department of Energy on monitoring and other data-driven initiatives, she said.

ECOS has slated a State Environmental Protection Meeting, "Achieving Air Quality: The Clean Power Plan & More," for states to discuss issues related to EPA's final existing source performance standards (ESPS), which the agency has said will likely be published in the Federal Register this October. One of the challenging aspects of the rule is that the rule involves state environment directors working with energy regulators, understanding dispatch and related costs, which is not an area that environmental agencies normally work in, Rudolph said. Rudolph has served in senior positions at CDPHE since 2007 and spent 14 years previously at the Colorado Attorney General's office, and has also held a leadership role on ECOS' air panel.

ECOS is also closely watching EPA's pending decision on whether to tighten its national ambient air quality standards (NAAQS) for ozone, which would trigger a requirement to craft new state implementation plans (SIPs) on how states will attain a stricter standard. "Ozone is of great concerns because meeting [the NAAQS] has become increasingly difficult -- it's an enormous challenge to come up with strategies to reduce ozone," Rudolph says, in part because it can be difficult to track which precursors to ozone present the biggest problems in one area.

Under a judicial deadline EPA must decide by Oct. 1 whether to follow through on its proposal to tighten the existing 2008 ozone NAAQS of 75 parts per billion (ppb) down to a limit in the range of 60-70 ppb. Industry sources have said EPA's preference is for a 70 ppb standard while the White House is pushing a 68 ppb limit.

Any new standard would trigger requirements for states to craft new SIPs to comply with the limit.

EPA officials at the ECOS meeting in Newport, urged state agencies to take advantage of an upcoming "window" in which to craft long-desired "multipollutant" air plans that address a slew of states' SIP duties at once, though states sought clarity on whether they can craft one overall plan and other options to streamline the process.

"We have been asked what we can do to align these things better, and I think there is a window coming up like we have not seen before," EPA Office of Air Quality Planning & Standards Director Steve Page told ECOS' air panel during ECOS' fall meeting Aug. 31 (Inside EPA, Sept. 4).

Multipollutant planning has for years been a goal of many states who say the current process for writing SIPs for complying with agency air programs is too burdensome and time-consuming.

For example, states must develop individual SIPs for attaining each of the six NAAQS, even if some of the pollution control strategies in those plans could potentially overlap.

Looming EPA mandates are increasing the pressure on states, which have long struggled with existing SIP duties at a time of ever-decreasing budgets -- pressure that is compounded by the pending ESPS deadline, which set a September 2016 deadline for submitting initial compliance plans, with final plans due in late 2018.

An EPA air official said at the meeting that agency has timed compliance periods for the ESPS, NAAQS and the regional haze program to coincide in order to facilitate such planning.

The haze program requires states to craft SIPs to cut air pollution and improve visibility in national parks and wilderness areas, but state air officials have criticized the program for a massive backlog in SIPs, with a 2018 deadline for the next round of haze SIPs looming. -- Bridget DiCosmo

Return to Top

News Headline: DRAFT EPA AGGREGATION POLICY PROMPTS CRITICISM FROM INDUSTRY, ADVOCATES |

Outlet Full Name: Inside EPA
News Text: EPA's draft rule to determine when oil and gas sector emissions must be "aggregated," or combined, for Clean Air Act permitting purposes is drawing criticism from industry sources who question the tests the agency will use to decide

aggregation and from advocates who say the rule could allow some operations to avoid aggregation.

The agency's Aug. 18 proposed source determination rule, includes two options for determining when sources are "adjacent" and therefore considered as a single source and subject to aggregation under one permit. One option is a controversial "functional interrelatedness" factor that would lead to more aggregation than current policy, and the second is a more conservative "physical proximity" test that EPA says is its preferred option.

Whether facilities are aggregated is a concern for industry because combining sources can push their total emissions over the threshold for stricter "major" air permits rather than weaker "minor" source permits.

EPA says the proposal, which is slated for publication in the Federal Register soon, would clarify how properties in the sector are determined to be adjacent in order to assist permitting authorities and permit applicants in making consistent source determinations in the prevention of significant deterioration and new source review programs. The regulation is the result of lengthy litigation over agency headquarters and regional office policies on aggregation.

EPA says its "preferred option" is the approach based on physical proximity. Under this aggregation test, the agency is proposing to define "adjacent" in terms of proximity as sources separated by a distance of one quarter mile or less.

The agency appears to have done "really an about face from what the Obama EPA has touted for so long," says one industry source, because it now appears to backing the more conservative approach to determine aggregation long supported by the sector. "After this huge fight, it seems like EPA is capitulating the whole thing." The physical proximity test is industry's preferred option because it provides a "bright line test," the source says.

A second industry source says of the physical proximity test that, "It's our preference and how it's been implemented for years. I don't think the agency can ignore that in the proposed rule."

In addition to the industry-favored physical proximity test, EPA is also taking comment on an alternative option to define "adjacent" by either proximity or if it is "exclusively functionally interrelated."

The agency says, "Exclusive functional interrelatedness might be shown by connection via a pipeline or other means, because of the physical connection between the equipment." For example, EPA says, exclusive delivery of product from one group of equipment to the other via truck or train and facts such as whether one group of equipment would be able to operate if the other group of equipment was not operating.

"The EPA and states would make a determination of adjacency based on a consideration of the interrelatedness of emitting activities in addition to the distance between them," the proposed rule says. Therefore, sources would be considered adjacent if they are separated by a distance of one quarter mile or more and there is an exclusive functional interrelatedness; or if they are separated by distance of one quarter mile or less.

By highlighting the physical proximity option as the preferred approach, EPA appears to be stepping away from allowing adjacency to be defined by solely functional interrelatedness -- a test first detailed in a 2009 memo from then-agency air chief Gina McCarthy to determine whether to combine emissions from dispersed oil and gas operations for permitting purposes. The memo said EPA assesses whether facilities are contiguous or adjacent; whether they are in common control; and whether they are part of the same industrial grouping.

McCarthy's memo revoked an earlier Bush-era memo by then-acting air chief William Wehrum stressing that proximity was the most important factor to determining adjacency. Industry groups sued over the memo in litigation in the U.S. Court of Appeals for the 6th Circuit's ruling in Summit Petroleum v. EPA., which essentially revived the Wehrum memo's focus on proximity in states covered by the court.

The 6th Circuit in 2012 rejected EPA's efforts to use an informal policy memo to codify the functional interrelatedness test, saying that unless the test was codified in EPA regulations, adjacency must be determined based solely on physical proximity, which is less likely to trigger aggregation.

EPA's rule includes as one option the functional interrelatedness test, which the first industry source says "does not work in the oil and gas context" because so many disparate sources on oil and gas development sites are connected by pipelines, resulting in sources being aggregated that should be considered separately.

The proposed rule would retain the three main factors EPA has long used in determining whether to aggregate: whether facilities are under common control, whether they are part of the same industrial grouping, and whether they are contiguous or adjacent. A third industry official cautions that the approach could have unintended consequences by potentially requiring sources with no relationship to one another to be considered as a single source. But other sources say EPA would still have to consider the other two factors: common control and industrial grouping.

Environmentalists who have long pushed EPA to codify the functional interrelatedness test in a formal rule welcome the existence of the proposal, but are identifying what they see as several flaws.

An environmentalist cautions however that "what's missing in EPA's proposed rule is

an assessment of what 'adjacent' should mean in the context of protecting clean air." Specifically, EPA mentions air quality protection but makes clear that the majority of protections will be achieved through the new source performance standards and air toxics rules. "That makes sense, but these programs only go so far," the source says.

Among the flaws in the rule, the source says the quarter-mile test is "completely arbitrary" and argues EPA should instead craft an "approach that makes interrelatedness the primary means of assessing adjacency," where an activity that is "dependent on another in any way, it should be considered interrelated and aggregated."

The environmentalist also says that the "exclusive" functional interrelationship approach EPA outlines in the proposed rule is "a bit extreme" because it would only require aggregation if pollutant emitting activities are 100 percent dependent on each other for their operation. "We've challenged this approach in the past," the source says. The environmentalist cites a 2010 permit challenge to EPA's Environmental Appeals Board (EAB) in In re:BP America Production Company, Florida River Compression Facility, in which environmental groups challenged EPA Region 8's finding that adjacency was not established due to a lack of "exclusive or dedicated interrelatedness."

The groups argued in the suit, which was later settled, that "Although EPA has held on numerous occasions that pollutant emitting activities should be considered adjacent based on their interrelatedness, in this case, EPA took the relationship between interdependency and adjacency to an absurdly extreme end."

Since the EAB suit, Region 8 has been offering similar rationale in its permitting, but has slowed down its permits, at least under Title V, "in large part because of the uncertainty around this issue," the source says. -- Bridget DiCosmo

Return to Top

News Headline: EPA WEIGHS NEW ENFORCEMENT FOCUS ON INDUSTRIAL WATER POLLUTION, SPILLS |

Outlet Full Name: Inside EPA
News Text: EPA is proposing to adopt new enforcement priorities including industrial water pollution and targeting accidents and spills at industrial facilities as part of its enforcement strategy for fiscal years 2017 through 2019, although the agency is cautioning that it faces limited resources to implement whatever priorities it ultimately selects.

In a notice published in the Sept. 15 Federal Register, EPA lists the two industrial priorities alongside a third new proposed priority of reducing air toxics at the community level. The notice is available on InsideEPA.com. See page 2 for details.

(Doc. ID: 184778)

The agency is also seeking input on whether to revise its six existing priorities, known as enforcement initiatives, which are: reducing air pollution from the largest sources, cutting hazardous air pollutants, ensuring energy extraction operations comply with environmental laws, reducing pollution from mineral processing operations, keeping raw sewage and contaminated stormwater out of water and preventing water contamination from animal waste.

"EPA selects these initiatives every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference," says the notice. EPA will take comment on the plan through Oct. 14.

The national enforcement initiatives (NEIs) allow EPA to focus more of its enforcement budget on high-priority targets, at a time of overall reduced federal funding. The agency's Office of Enforcement & Compliance Assurance is part of EPA's Environmental Programs and Management account, which is currently funded at $2.61 billion, and President Obama has proposed to fund it at $2.84 billion in FY16. A scrapped House FY16 bill would have funded it at $2.47 billion while the Senate floated a funding level of $2.56 billion.

In the Register notice, EPA says that even if it cuts some of the existing enforcement initiatives and reduces the overall number of NEIs, it is still likely to face resource constraints.

Therefore it will adapt the plans to its "next generation" compliance framework, which aims to overhaul environmental enforcement to rely less on site inspections to force compliance, and more on advanced monitoring, electronic reporting and self-implementing rules. "Our goal will be to use the most current monitoring technologies, data analytics and transparency, as well as the latest thinking on what drives better compliance, to get better results even in a time of serious resource constraints. We invite comment on what some of these Next Gen opportunities might be for the continuing and potential new NEIs," according to the notice.

EPA says it will not produce a formal response to comments. Instead, it will announce its selections in the enforcement office's next draft National Program Manager guidance.

EPA is seeking comment on whether to establish an NEI for industrial water pollution. It says the focus would be on the mining, chemical manufacturing, food processing and primary metals manufacturing sectors, which the notice says "contribute a disproportionate amount of the pollution over discharge limits."

"In addition to being a focused attempt to significantly reduce serious water pollution across the nation, selecting this as an NEI would allow for a national approach for

those companies that operate in more than one state and would support a consistent national strategy to achieve compliance across industry sectors," the notice says.

The separate potential NEI for accidental releases and incidents at facilities would focus on training mandates, routine inspections and other precautionary measures to prevent explosions, spills and other disasters at facilities storing hazardous substances -- which would tie into the agency's ongoing efforts to craft a facility safety program known as the Risk Management Plan.

"This potential NEI would be a targeted focus on the facilities and the chemicals that pose the greatest risks, with a goal of increasing industry attention to preventing accidents, instead of addressing problems after accidents happen, thereby reducing the risk of harm to communities and workers," the proposal says.

The other new NEI outlined in EPA's proposal is for community air toxics, which it says would be linked to renewing the existing focus on air toxics generally. The notice says that EPA has found in the course of enforcing air toxics violations that air releases from organic liquid storage tanks and from hazardous wastes pose a particular danger to vulnerable communities, and under the new NEI it would focus enforcement actions on those sectors in the coming years.

On organic liquids tanks, EPA notes that "[t]here are thousands of tanks operating in the United States at refineries, chemical plants, and other bulk storage facilities that are located in ozone nonattainment areas, communities of environmental justice concern, or other areas with sensitive populations."

In addition to the new strategies, the Sept. 15 notice also sets out how EPA would proceed under the six existing NEIs if they are renewed.

If the agency chooses to renew the NEI for water pollution from animal waste, the proposal says it would adapt its existing compliance strategy to include new technologies. "For the future, EPA is considering an updated strategy to explore the use of nutrient recovery technologies that show promise to reduce water pollution, implementation of instream monitoring to demonstrate impacts to water quality and identify violations, as well as new tools to identify the most significant violators," it says.

Similarly, the stormwater NEI would focus on integrating new technologies into existing compliance agreements crafted in recent years. "EPA will need to continue to monitor implementation of these long-term agreements, and to adapt them to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial capability, or technological advances," the notice says.

For the major air pollution initiative, EPA notes that while it has made "significant progress" taking action on large-scale air violations, "more work may be needed on

new cases and EPA has an on-going commitment to monitor progress under existing consent agreements to assure that the required actions are implemented and air pollution reductions from completed enforcement actions actually occur."

Similarly, it says that while the NEI for the energy extraction sector has produced a series of high-profile enforcement actions, "[t]his sector continues to develop and change rapidly, and EPA is continuing to evaluate the best way to address pollution problems in this sector, including opportunities for greater use of advanced monitoring.

The agency does not outline a new focus for the mineral production sector NEI, noting instead that "By the end of FY17 many of the highest risk mineral processing facilities are expected to be under enforceable agreements or orders that will require them to properly address hazardous waste." -- David LaRoss

Return to Top

News Headline: MCCARTHY VOWS TO 'PUSH THE ENVELOPE' ON RFS TO BOLSTER CLIMATE AGENDA |

Outlet Full Name: Inside EPA
News Text: EPA Administrator Gina McCarthy says the agency intends to "push the envelope" in its forthcoming final rule setting biofuel volumes requirements for three years under the renewable fuel standard (RFS), telling a gathering of industry officials that the program is an important part of President Obama's push to combat climate change.

"The RFS is a tool to address climate change. It is a tool we need to bring to the table" in the country's efforts to fight climate change, McCarthy told the annual advocacy conference of Growth Energy, a major trade association representing corn-based biofuel makers Sept. 15.

While the administrator promised to seek more ambitious targets for the fuels under the final version of the rule, she also urged groups that have been pressing the agency to join the effort.

"I understand different folks have different perspectives on our proposed numbers, but our goal is to grow the market for renewable fuels. Rather than focus on where we disagree, we need to find common ground and focus on how to get to the levels set by Congress," she said in her prepared remarks.

But winning such an agreement may be difficult. Top executives from several advanced and cellulosic biofuel companies released a letter to President Obama Sept. 16 discussing how EPA's proposed RFS "will undercut investment in the next generation of biofuels, increase carbon emissions and send jobs overseas, in direct

conflict with pledges the President has made on clean energy," according to a press announcement.

And in a Sept. 15 exchange with reporters, Growth Energy CEO Tom Buis would not say whether the group will sue EPA if the agency sticks with its currently stated reason -- lack of supply -- for setting renewable fuel volumes below statutory levels.

The RFS requires refiners to blend increasing volumes of renewable fuels into the fuel supply, according to step increases mandated by Congress in order to promote the uptake of fuels with lower greenhouse gas (GHG) emissions than conventional gasoline.

Specific volume requirements are established for advanced and cellulosic renewable fuels -- which have lower GHG emissions than corn-based ethanol -- but the bulk of the overarching renewable fuel requirement is met through corn ethanol. EPA also sets targets for biomass-based diesel.

EPA sets annual volumes requirements that can be lower than the statutory levels if the agency invokes its RFS waiver authority. The agency has historically set volumes lower than the Congressional requirements for certain categories of biofuels where production has fallen short of expectations.

Prompted by oil industry litigation, EPA now faces a court-ordered Nov. 30 deadline to finalize its proposed rule setting fuel volumes for 2014, 2015 and 2016, after the agency fell years behind schedule in setting annual volumes requirements and is now attempting to catch up. "My priority is to get them out on time," McCarthy said of the volumes requirements.

In its original proposal for 2014 fuel volumes -- since withdrawn in favor of the current proposal -- EPA for the first time acknowledged the "blend wall" -- the point at which no more ethanol can be safely blended into the fuel supply given current infrastructure and vehicle limitations due to the fuel's corrosivity -- that oil sector opponents of the RFS say exists, and the agency reduced required fuel volumes accordingly.

The agency's new proposal would set the total renewable fuels volumes at 15.93 billion gallons (bn gal) in 2014 of ethanol-equivalent. This compares to 15.21 bn gal in EPA's never-finalized original proposal for 2014, and a final 2013 number originally set at 16.55 bn gal -- although volume requirements are sometimes adjusted through subsequent rulemakings.

The new proposal would set a 16.3 bn gal mandate for 2015, and a 17.4 bn gal mandate for 2016. EPA also proposes substantially higher volumes for advanced biofuels, cellulosic biofuels and biomass-based diesel than it did in 2014.

While oil sector groups such as the American Petroleum Institute (API) offered a

cautious welcome to the new approach, they say that EPA in its revised proposal covering the years 2014, 2015 and 2016 has not gone far enough to curb ethanol demand.

While the the 2014 numbers reflect actual production in that year, API says that going forward EPA has still been too generous to corn-based ethanol, given the blend wall and low public demand for higher ethanol blends, and should reduce the volume proposed for 2016.

Ethanol advocates, however, say that the blend wall is artificial, the result of the oil sector's deliberate effort to restrict availability of higher ethanol blends by limiting fueling infrastructure that distributes ethanol. They also say EPA's cited justification for setting the overall renewable fuel mandate lower than Congressionally mandated levels -- a lack of available fuel -- is false and unlawful. EPA said that a lack of distribution infrastructure for ethanol limits the fuel's supply -- but ethanol groups say that production, and hence supply, of corn-based ethanol is plentiful.

Challenged during a question and answer session on the issue of whether there is a lack of ethanol supply, McCarthy said she understood the argument and that EPA continues to review the issue.

She also, however, stressed that any volumes rule, especially one setting volumes for several years as part of a long-term strategy, would have to be legally defensible -- an apparent warning against EPA setting the volumes too high. EPA is aiming for "ambitious yet achievable growth," she said.

McCarthy said the country has reached a "tipping point" for the development of renewable fuels, with a need for further investment to make investments already made pay off. The RFS envisages a growing proportion of the total renewable fuel supply coming from cellulosic and advanced biofuels, and McCarthy said EPA will "focus on growing that next level of biofuels."

Earlier at the same event, Secretary of Agriculture Tom Vilsack was bullish in his support for the renewable fuels sector, like McCarthy noting environmental and economic benefits of the RFS program.

Vilsack ridiculed a report by economic consulting firm NERA, issued by API Sept. 9, which warned that attempting to meet the statutory renewable fuel mandates would force refiners to reduce the national supply of gasoline and diesel by up to 30 percent, with attendant wild fuel price rises up to $90 per gallon. API in a Sept. 9 statement said this would have "crippling" effects on the economy. The report is available on InsideEPA.com. See page 2 for details. (Doc. ID: 184886)

Vilsack noted current fuel prices of a little over $2 per gallon. "I mean seriously, that was just an absurd report," he said.

Vilsack added that the Department of Agriculture (USDA) is sponsoring efforts to expand the nation's network of "blender pumps" to distribute ethanol blends higher than the 10 percent ethanol fuel (E10) now commonly in use. Some 5,000 new blender pump systems are being introduced using funds leveraged with USDA money, he said.

Buis in a Sept. 9 response to API's report said, "Regardless of what API claims, the bottom line is that ethanol blends help clean the environment, are higher performing, less expensive and directly benefit the consumer by providing a choice and savings." -- Stuart Parker

Return to Top

News Headline: New Mexico official: EPA kept water data secret after spill |

Outlet Full Name: Advocate Online, The
News Text: ...2015 Photo: Evan Vucci, AP Image 1of/3 Caption Close Image 1 of 3 Senate Environment and Public Works Committee Chairman Sen. Jim Inhofe,...

Return to Top

News Headline: New Jersey seeks to block appeal in Exxon settlement |

Outlet Full Name: Advocate Online, The
News Text: ...groups, which include Clean Water Action, Delaware Riverkeeper, Environment New Jersey and New Jersey Sierra Club, and state Sen. Ray...

Return to Top

News Headline: INHOFE EYES RENEWED PUSH FOR 'GOOD SAMARITAN' BILL AFTER EPA MINE SPILL |

Outlet Full Name: Inside EPA
News Text: Sen. James Inhofe (R-OK), chairman of the environment committee, plans to renew efforts to move long-stalled legislation that would provide environmental liability relief for so-called Good Samaritans who conduct cleanups of abandoned hardrock mines, spurred in part by EPA's Aug. 5 accidental spill of wastewater containing heavy metals from an abandoned Colorado mine.

Democrats, however, appear to be split on whether to back such an effort.

Inhofe during a Sept. 16 Senate Environment & Public Works Committee (EPW) hearing on the Gold King Mine spill in Colorado called for reigniting the effort to

pass Good Samaritan legislation. He noted that a bipartisan bill passed out of the committee during his previous chairmanship in 2006, but he added that in the years since, such legislation had "received very little attention from Congress or this committee."

But, Inhofe said, he now plans to work with fellow senators in Colorado and New Mexico who are promoting Good Samaritan legislation. "I think we will, this time, do what should have been done 10 years ago," he said.

Good Samaritans are parties unconnected to the contamination at abandoned hardrock mine sites who volunteer to clean up the contamination.

But such voluntary parties have been reluctant to clean up abandoned mines because of concerns that they will be held liable under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), Resource Conservation & Recovery Act (RCRA) or the Clean Water Act (CWA) for remaining contamination.

EPA in 2012 issued policy guidance aimed at providing additional liability protections under the CWA and CERCLA for volunteer parties seeking to remediate abandoned hardrock mines, but the agency at the time conceded the limits of its policy. It noted that the document "does not address or resolve all potential liability associated with discharges from abandoned mines." A source with the Western Governors Association said at the time that there remains a sense of reluctance among innocent parties who fear third parties may sue under the CWA if they take on a cleanup of an abandoned hardrock mine.

In response to follow-up questions on the effort Inhofe plans, an EPW committee spokeswoman compares the issue of abandoned mine cleanups to brownfields, noting that the 2002 brownfields law provides liability protection from the Superfund law to new purchasers of contaminated property who did not cause the contamination.

She says by some counts there are more than 400,000 abandoned mines, and EPA cannot address all of them. Where no viable owner or operator exists, often nothing is done to address such mines, the spokeswoman says. She says Good Samaritans need protection from CERCLA and the CWA, noting that the brownfields law fails to "protect them since it only protects new owners and generally Good Samaritans do not take title to the property -- they just want to help clean it up."

During the hearing, and a second hearing on the spill held the same day by the Senate Indian Affairs Committee, Colorado Sens. Cory Gardner (R) and Michael Bennet (D) indicated that the spill signals a need for passing Good Samaritan legislation. The EPW spokeswoman says Gardner and Bennet are considering the 2006 Good Samaritan bill -- S. 1848 in the 109th Congress -- as well as other past bills.

Sen. Martin Heinrich (D-NM) also expressed support during the hearings for Good

Samaritan legislation. He noted that cleanup estimates for abandoned mines could be between $32 billion and $72 billion, and said estimates indicate that 40 percent of western watersheds may be polluted by mining waste.

Meanwhile, Sen. Tom Udall (D-NM) noted at the EPW hearing that he and other senators planned to soon introduce legislation that in part would "require the EPA and others to identify the risks of more spills by assessing mines for cleanup."

The hearings were the second and third congressional hearings probing EPA's accidental release at the Gold King Mine into the Animas River, CO, Aug. 5.

The National Mining Association, which represents the mining industry, also issued a statement Sept. 15 backing a push for Good Samaritan legislation in light of the mine spill. NMA President and CEO Hal Quinn says in the statement that NMA hopes the congressional deliberations probing the spill "will result in consideration of practical solutions for addressing legacy mines. Foremost among these would be legislation that would remove the threat of liability from Good Samaritans, including private parties and the mining industry, interested in remediating these sites," he says.

While some Democrats are voicing support for a Good Samaritan legislative effort, Democratic Sens. Barbara Boxer (CA), the EPW ranking member, and Sen. Edward Markey (MA) called for caution during the EPW hearing with such legislation, warning it could lead to taxpayers paying for such cleanups.

"Some argue that waiving liability for cleanups is needed to address abandoned mine pollution," Boxer said. "These so-called Good Samaritan waivers, unless they are very carefully crafted, are not the solution. They need to be carefully crafted. Otherwise, what happens is, there [are] no rules, and there can be unintended consequences such as we've seen, and cost taxpayers even more."

Markey during the EPW hearing also argued against "cavalierly" waiving environmental laws under Good Samaritan legislation, "because that's the last wall of environmental protection which we've got."

Instead, Boxer and Markey argued for ensuring polluters pay, increasing funds to EPA and federal land management agencies, and reforming the 1872 mining law to create a fee on hardrock mining that would go into a fund for abandoned mine cleanups. Boxer in her opening written statement said the federal government barely makes "a dent in cleaning up abandoned hardrock mines," noting that EPA "spends an average of about $220 million per year, and the Bureau of Land Management and the Forest Service spend about $5 million and $20 million respectively -- although Congress has appropriated less in recent years."

EPA Administrator Gina McCarthy during questioning noted that the Obama administration in the fiscal year 2016 budget suggested the need for a fee to be paid

by the hardrock mining sector.

Senate Republicans at both hearings also heavily questioned McCarthy on whether the agency was being held to the same standards that the private sector would be under similar circumstances, contending a double standard was at play. -- Suzanne Yohannan

Return to Top

News Headline: EPA TARGETS VAPOR INTRUSION, PFCS AS FEDERAL FACILITIES CLEANUP PRIORITIES |

Outlet Full Name: Inside EPA
News Text: NEWPORT, RI -- EPA's top official for cleanups of contaminated federal facilities says the agency is preparing to heighten its focus on vapor intrusion and emerging contaminants including perfluorochemicals (PFCs) in 2016 efforts at Department of Defense (DOD) sites, following new guidances on both topics that faced criticism from DOD.

GOP legislators meanwhile appear to be renewing their efforts last raised in the 113th Congress to require federal agencies to follow state laws and regulations as well as federal policies when cleaning up contaminated sites they own, which would, if successful, add still more conditions to work at defense and other federal sites.

Speaking at the Environmental Council of the States' (ECOS) fall meeting here on Sept. 2, Charlotte Bertrand, acting director of the Federal Facilities Restoration and Reuse Office within EPA's Office of Solid Waste and Emergency Response, listed the PFC class of chemicals as a high-profile emerging contaminant that the agency is seeking to address in the future. Bertrand added that vapor intrusion is a new pathway for exposure that regulators will consider.

"As we move forward into 2016 and beyond, I think everyone recognizes that risk is not just static -- risk changes on us. There's always new information that comes forward. There are emerging contaminants, there are changes to toxicity values, there are land uses that you once thought might never come close to a property that change," she said during the ECOS Federal Facilities Forum.

But EPA's policies on vapor intrusion and PFCs -- contaminants commonly found in firefighting foams that were used by the Air Force and others to extinguish fires at its facilities and airports -- have met resistance from DOD.

The defense agency has strongly opposed EPA's proposal for a metric to list sites on the Superfund National Priorities List (NPL) due to vapor intrusion, and sought changes in EPA's order to clean up PFC contamination believed to be caused by chemicals at the former Pease Air Force Base in Portsmouth, NH.

On vapor intrusion, DOD has charged that EPA's pending "scoring" rule that would guide consideration of vapor intrusion risks when determining whether contaminated sites are eligible to be placed on the NPL is unnecessary, joining industry groups in urging the agency to drop development of the rule.

The proposal is currently undergoing interagency review at the White House Office of Management & Budget, and would permit the use of new factors -- specifically vapor intrusion and water intrusion -- that could be relied on to score sites under the agency's Hazard Ranking System. EPA applies that system to determine whether to place a contaminated site on the NPL. While contaminated sites with vapor intrusion can currently be listed on the NPL, they cannot be listed solely because of vapor intrusion.

Opponents of the rule, including DOD and industry groups, claimed in comments that there is no need for the change, since there are no sites that would be eligible for listing and that neither EPA nor the public had ever identified the 37 sites that the Government Accountability Office previously estimated may warrant listing.

Industry commenters said the costs of the rule would outweigh any benefits and that the Superfund program's flat budget cannot easily accommodate a flood of new sites.

Bertrand did not elaborate on how she expects EPA to approach vapor intrusion in cleanups, saying only that the agency considers the issue "a problem that can emerge" at facilities.

PFC contamination has gained prominence after EPA issued a first-time Safe Drinking Water Act (SDWA) administrative order to clean up the chemicals at the Pease base, which the Air Force has been slow to implement as it sought changes to the order -- despite pressure from lawmakers to quickly address contamination there.

EPA issued what appears to be its first SDWA order for a PFC cleanup on July 9, after the Air Force acknowledged that PFC levels in drinking water wells near Pease exceeded EPA's provisional health advisory levels for the chemicals. However, DOD sought changes to the order before implementation, and EPA revised the order on Aug. 3, making what the agency termed "minor alterations."

In a July 24 letter, Sens. Jeanne Shaheen (D) and Kelly Ayotte (R) pressed the Air Force to immediately comply with the order, saying to Air Force Secretary Deborah L. James that "your failure to move quickly and comply with this Order continues to pose a public health risk to the community."

"I know some of the states here have dealt with [PFCs] -- they are something that we are working closely with the states to talk to DOD about," Bertrand told the ECOS forum. She also listed two more general concerns as priorities for the agency in 2016: groundwater contamination and identifying buried munitions in watery

conditions.

Groundwater remediation is a major concern for a host of facilities and contaminants that Bertrand emphasized can persist even after active cleanup is finished at the facility itself.

"Even after remedies are in place, we still have a lot of work remaining in this program," she said.

Identifying when a facility designated for cleanup has buried munitions, and what danger they pose, is a long-standing problem for EPA and DOD.

"Munitions technology is improving, but munitions are going to continue to challenge us -- particularly trying to identify munitions in a water environment," Bertrand said.

Meanwhile, House Republicans are again raising the possibility that agencies should be forced to follow state waste policies at cleanups.

During a Sept. 11 hearing of the House Energy & Commerce Committee's energy and environment panel to discuss federal facility cleanups, subcommittee Chairman Rep. John Shimkus (R-IL) and Rep. Bob Latta (R-OH) both questioned DOD's John Conger on whether the department adheres to state mandates at its contaminated sites.

In his answer to Latta, Conger said DOD follows state rules at former federal facilities that are now owned by private parties or the state, but "Where it's federal property it gets more complicated."

Latta also questioned whether section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law, is being interpreted to establish sovereign immunity for federal agencies against state law.

"Do you think that section 120 of CERCLA needs to be amended to make sure that federal agencies do comply with state regulations and laws dealing with cleanup?" he asked EPA waste chief Mathy Stanislaus.

Stanislaus replied that he could not answer the legal question, but said, "Where we are involved with federal sites, we view the states as a partner. I really can't speak to cases beyond that."

Shimkus' and Latta's questions echoed legislation they both backed in 2013 that would have strengthened the sovereign immunity waiver in CERCLA section 120 to make it clear that the waiver allows states to enforce their laws at current and former federal facilities -- a move states have long championed but which was strongly

opposed by federal agencies and Democrats.

"What we've heard is, everyone views the states as a partner, but no one is required to treat the states as a partner," Shimkus said. -- David LaRoss

Return to Top

News Headline: EPA Kept Water Data Secret After Spill |

Outlet Full Name: New York Times Online, The
News Text: ...Mont. — A New Mexico official says federal regulators refused to share water quality data for weeks following a blowout of toxic...

Return to Top

News Headline: Water picture for town improving |

Outlet Full Name: Hampton Union - Online, The
News Text: ...their lawns and gardens for the remainder of the growing season, after the New Hampshire Department of Environmental...

Return to Top

News Headline: Earth's record streak of record heat keeps on sizzling |

Outlet Full Name: Advocate Online, The
News Text: ...on our planet today." Scientists blame a combination of human-caused climate change and natural El Nino, a warming of the equatorial...

Return to Top

News Headline: Powerful environmental group sues over pipeline - The Boston Globe |

Outlet Full Name: Boston Globe Online
News Text: ...The group also claimed the state utility regulator ignored the state's global warming law when it approved three contracts on a...

Return to Top

News Headline: Boston Medical Center aims to become city's 'greenest' hospital |

Outlet Full Name: Boston Globe Online
News Text: ...city blocks in the South End, is on track to cut its greenhouse gas emissions 50 percent by 2020, twice as aggressive as the goal of most...

Return to Top

News Headline: As if global warming weren't bad enough, it helps mosquitoes |

Outlet Full Name: USA Today Online
News Text: Global warming benefits mosquitoes at the expense of the Arctic ecosystem, according to a new study. Video provided by Newsy Newslook

Return to Top

News Headline: Climate Change, El Nino Make Hottest Year on Record a Good Bet |

Outlet Full Name: Washington Post Online
News Text: ...-- An El Nino in the Pacific Ocean and rising temperatures caused by climate change have put the world on an almost irreversible...

Return to Top

News Headline: Global warming 'pause' never happened, scientists say |

Outlet Full Name: Washington Post Online
News Text: ...capped by two studies published this week -- suggests there never was any global warming "pause." Calved icebergs from the nearby...

Return to Top

News Headline: Energy chief reflects on 'Walden' and its message for his agenda |

Outlet Full Name: Boston Globe Online
News Text: ...center at Walden Pond in Concord. The a building will generate enough renewable energy onsite to offset its total energy...

Return to Top

News Headline: National Science Foundation awards $1.2 million for science

education in Boston area schools |

Outlet Full Name: Boston Globe Online
News Text: ...Massachusetts companies that focus on science education and residential energy efficiency a combined $1.2 million grant over the...

Return to Top

News Headline: Firm looking to finalize Dover solar project Updated at 4:27 PM |

Outlet Full Name: Foster's Daily Democrat Online
News Text: ..., said the N.H. Public Utilities Commission awarded the project renewable energy rebates in April. The company is still waiting...

Return to Top

News Headline: STATES SUBJECT TO 'WATERS' RULE INJUNCTION UNCERTAIN ABOUT POLICY IMPACTS |

Outlet Full Name: Inside EPA
News Text: Officials in some of the 13 states subject to a federal judge's order halting implementation of EPA's Clean Water Act (CWA) jurisdiction rule say the policy impacts of the ruling are uncertain, with some saying they already use a broader jurisdiction test than the federal rule while others expect resource problems if the rule is eventually upheld.

"As it stands today, nothing has changed from what we did a week or a year ago," says one North Dakota official, as EPA has said that in the 13 states subject to the injunction it will continue its existing practice of implementing 2008 George W. Bush administration guidance on the water law's reach. For all non-CWA jurisdictional waters in North Dakota, the official says that the state's laws already address how to regulate such waterbodies.

Regulators from other states, including Montana, see very little impacts if the injunction were to be lifted given that their existing state definitions of waterbodies that must be covered by CWA discharge permits is currently broader than EPA and the U.S. Army Corps of Engineers' joint rule defining jurisdictional waters.

"The Montana definition of state water is broader than [the] waters of the U.S. [rule]," a second state source says, so the new rule should not effect the state's implementation of its CWA section 402 National Pollutant Discharge Elimination System permitting program. Still, the source notes the Corps -- which implements the section 404 dredge-and-fill permit program in the state -- is drafting guidance on applying the new federal rule.

The injunction, issued Aug. 27 by Chief District Judge Ralph Erickson of the U.S. District Court for the District of North Dakota's Southeastern Division, was sought by North Dakota and 12 other states that filed suit over the CWA rule. Following the order, EPA said it would only heed the injunction in those 13 states and use the Bush-era guidance for CWA findings. In all other states, the agency vowed to implement its recent CWA rule.

That prompted push-back from the 13 states who asked Erickson to clarify his injunction, and in a subsequent Sept. 4 order he said it only applies in the states that have their suit pending in his court: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, New Mexico and North Dakota.

Justice Department attorneys then in a Sept 9 request urged Erickson to stay briefing in the case, citing Oct. 1 oral arguments before a multi-district litigation panel that will consider EPA's bid to consolidate and transfer to one court a slew of similar suits over the rule. Erickson at press time had not ruled on that request.

EPA and the Corps previously sought a a stay in the litigation in July, which the court rejected on the grounds that the court had not ruled on states' motion seeking a preliminary injunction to block the rule. In the new motion for a stay, DOJ says that putting the case on hold would only be for a limited time given that a hearing on the administration's motion to consolidate all pending federal district court cases over the CWA rule will take place Oct. 1 in New York City, "and defendants anticipate an order to follow soon after."

But the states in the litigation pending in Erickson's court, State of North Dakota, at el., v. EPA, Sept. 15 filed a motion urging the court to set a briefing schedule for the "timely adjudication of the states' challenge to the final regulation." The states say they attempted to discuss a schedule with DOJ but "were informed that the Agencies would not discuss a schedule for this case and would oppose efforts to allow this case to proceed."

The district courts have so far split over whether the jurisdiction rule should be challenged in the district or appeals courts, with at least eight separate district court cases over the rule being stayed in response to DOJ's requests, while Erickson found he had authority to issue the injunction that applies to the 13 states.

Suits filed over the rule in federal appeals courts have been consolidated in the U.S. Court of Appeals for the 6th Circuit, which has set a briefing schedule in Murray Energy Cooperation, et al., v. EPA, et al. In a Sept. 16 order, the court has set an Oct. 2 deadline for all motions challenging the court's jurisdiction, with any responses due by Oct. 23. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc ID: 184892)

Should EPA ultimately prevail in the litigation and the injunction be lifted, officials in the 13 states currently subject to Erickson's order say that outcome could present significant resource problems.

Trevor Baggiore, water quality director for the Arizona Department of Environmental Quality, said in a Sept. 15 interview with Inside EPA that the rule seems likely to be struck down by a federal court. However, if it is upheld, Baggiore said the department is prepared to implement its provisions, though he said that the state "may have to go back and review past decisions" to ensure they are consistent with the new rule.

The Montana official says that while states suing over the rule are hoping it is struck down, if it is not, "we'd have to make significant changes," and possibly require additional staff to implement the rule, but says that the state has not yet had those discussion with EPA and the Corps, adding "it's left a lot of questions."

Because some states, including Montana and Colorado, have broader state definitions governing surface waters than the EPA rule's definition of jurisdictional waters, that might mean fewer impacts to state programs. But it is not clear how the Corps will begin implementing the 404 program under the new rule, which took effect Aug. 28.

"We expect there will be resource implications," if the injunction is lifted and the 13 states that are following the Bush-era guidance suddenly have to implement the Obama administration's rule, says a third state official from one of the 13 states. "There's not a lot we can do to prepare because there hasn't been a lot of detail on what the rule will actually mean," the source says.

One concern for the 13 states, says the source, is that because the rule is currently in effect in the 37 other states, if the injunction is lifted, the rule would be implemented instantly without opportunity for the 13 states to reach out on specific questions. -- Bridget DiCosmo

Return to Top

News Headline: Chemical spraying in Easton remains a mystery |

Outlet Full Name: Enterprise - Online, The
News Text: ...2 of 2 - “Of course it's a concern. You don't want people assaulted by pesticides or whatever it was as they jog down the street,” Colton...

Return to Top

News Headline: STATES SEEK WHITE HOUSE MEETINGS ON EPA WORKER

PROTECTION RULE COSTS |

Outlet Full Name: Inside EPA
News Text: State officials are seeking meetings with White House officials and EPA to discuss their concerns that the forthcoming overhaul of the agency's pesticide worker protection standards (WPS) will impose unwieldy costs on states and trigger requirements under the Unfunded Mandates Reform Act (UMRA) for EPA to conduct additional analysis, according to a state source.

The states' concerns over the potential costs of implementing EPA's WPS revisions come as the White House Office of Management and Budget (OMB) is reviewing EPA's proposed revisions before an expected release this fall.

Additionally, advocacy groups seeking stronger revisions, including United Farm Workers and Farmworker Justice, are meeting with OMB this month about the forthcoming rule revising the WPS.

But states are not confident EPA will address their concerns in a final rule, the state source says, noting that while states, in discussions with EPA over the past year, have faulted the agency's analysis of the costs of the proposed revisions, the agency has backed its economic analysis.

"We feel like it's going to cost the states more money than EPA says it will," the source says, adding that states have argued the WPS revisions could burden states with costs exceeding the $100 million UMRA threshold.

According to EPA's website, exceeding that threshold would require EPA take additional steps, including considering regulatory alternatives, seeking state officials' input in developing a proposal, and preparing written justification of the agency's legal authority and cost-benefit assessment backing the rule.

The source tells Inside EPA that numerous smaller states lack adequate resources for training staff to enforce the revised standards and train industry how to comply. Without either financial support from EPA or delays in implementing aspects of the new rule, the source says, states will suffer significant economic burden.

"If the proposed rule goes final and states don't have the resources to adequately implement the rule, then we would definitely need to look carefully at what the next steps would be," the source says.

EPA took comment last summer on its March 2014 proposed revisions, which include requiring farmworker training on preventing and treating pesticide exposures annually instead of every five years, prohibiting re-entry into fields sprayed with certain pesticides until after residues have dissipated, and establishing a minimum age of 16 for handling pesticides.

The proposed revisions to the decades-old WPS came after years of legal threats from environmentalists and farmworker advocates who argue farmworkers face risks from pesticide exposure and receive fewer protections than workers who use toxic chemicals in other industries.

Since the proposal, advocates have pressed EPA to strengthen requirements, especially for protecting pesticide handlers, by raising the minimum age requirement from 16 to 18, and requiring employers to offer protections, such as engineering controls and medical monitoring, for handlers of certain highly toxic pesticides.

United Farm Workers and Farmworker Justice have scheduled separate meetings on the rule with White House officials on the rule this month, according to OMB's web site. Farmworker Justice met with OMB Sept. 15 to back the proposed training requirements and press for increasing the minimum age for pesticide handlers from 16 to 18, among other changes, a source with the group says.

Additionally, the National Sustainable Agriculture Coalition is scheduled to meet with OMB officials Sept. 17.

Meanwhile, the U.S. Small Business Administration (SBA) and numerous states in separate comments last summer urged EPA to overhaul the costly rule, arguing the agency's analyses are inadequate to support the proposed revisions.

The National Association of State Departments of Agriculture (NASDA), in comments last summer, echoed industry arguments that overhauling the WPS is unnecessary because the existing standards, combined with EPA pesticide reviews under the Federal Insecticide, Fungicide and Rodenticide Act offered adequate protection.

NASDA also said the proposal includes "numerous unfounded assumptions" and urged EPA to work with states to craft targeted WPS revisions that better reflect changes in the pesticide industry over the past two decades.

SBA also urged EPA to further analyze costs of the proposal, saying the "factual basis contained in the economic analysis" fails to support its conclusions.

While some states have already implemented annual training requirements, numerous others, especially smaller states lack adequate staff and resources to train state officials and the regulated industry on the new requirements, the source says. States hope to meet with EPA and OMB in the coming weeks to call for either changes to the rule, funding for state implementation efforts, or delays in requirements for implementation.

"EPA should defer to the states in terms of identifying the time lines and processes that work best for state certification and oversight" of the new WPS requirements, the source says. -- Dave Reynolds

Return to Top

News Headline: ADVISORS REITERATE CALL FOR EPA TO BOLSTER NOVEL SKIN CANCER RISK FOR BAP |

Outlet Full Name: Inside EPA
News Text: EPA science advisors are reiterating calls for EPA to add two studies to bolster the agency's novel skin cancer risk estimate in its draft assessment of human health risks of the petroleum chemical benzo(a)pyrene (BaP), and to better justify other aspects of the assessment, including a risk value for exposure through ingestion.

During a Sept. 2 conference call, a panel of EPA's Science Advisory Board (SAB) responded to an agency request for advisors to clarify their criticism that the novel skin cancer risk estimate for BaP lacks adequate justification, and that the agency should have included two additional studies to bolster the risk.

"We're suggesting that it's important that they're considering these two studies, and [that] the criteria used for exclusion was inadequate to exclude them for risk assessment purposes," panel chairman Elaine Faustman, of the University of Washington, said during the call.

The Chemical Assessment Advisory Committee (CAAC), a subgroup of the SAB, is finalizing peer review of EPA's September 2014 draft Integrated Risk Information System (IRIS) assessment of BaP, which includes EPA's first-ever skin cancer risk estimate. The BaP IRIS assessment is also significant because the agency intends to use BaP as a reference chemical to estimate the toxicity of mixtures of polycyclic aromatic hydrocarbons (PAHs).

During the Sept. 2 call, CAAC members said they intend to finalize their recommendations to EPA in the coming weeks and forward them to the SAB for review.

The panel has generally backed EPA's draft conclusions that BaP poses neuro-developmental, reproductive and immune system risks, as well as EPA's proposal to classify the substance a human carcinogen.

But in a July 24 draft review, the CAAC also criticized EPA's approaches for calculating the first-time skin cancer risk estimate, as well as its non-cancer inhalation and oral risk estimates. The group has called for EPA to add two additional studies -- a 1983 study, Nesnow, and a 1977 study, Levin -- to bolster its skin cancer estimate.

Last month, EPA's top risk assessor asked the CAAC to clarify its call for additional

studies, saying the agency sought to include only studies that were most appropriate for dose-response analysis and for deriving a cancer slope factor for lifetime dermal exposure to BaP (Inside EPA, Aug. 28).

Vincent Cogliano, EPA's IRIS program director, in comments to the CAAC, cited criteria for choosing studies, including that they expose mice for approximately two-years duration, or lifetime, and said less-than-lifetime studies might underestimate risk by overlooking the potential for developing tumors later in life.

During the CAAC's Sept. 2 conference call, panelists reiterated their push for bolstering the skin cancer risk with two additional studies, arguing that IRIS documents put the exposure criteria for including studies at one year, rather than two. One of the studies the CAAC recommends including exposed animals for more than a year, and the other for just under a year, not a significant enough difference to warrant exclusion, panelists said.

"There is no mention in the IRIS review document that studies considered for dose response were limited to those of approximately 2-years duration," panelists say in a draft response to EPA's request. "This is new information."

Panelists also refined additional recommendations for EPA to strengthen the draft assessment by providing better justification for its proposed reference dose (RfD), a risk estimate calculated to protect against non-cancer effects from ingestion exposure to BaP.

The CAAC, in its July 24 draft review, questioned EPA's justification for its choice of developmental endpoints for setting an RfD, and suggested the agency give greater consideration of reproductive outcomes, including cervical hyperplasia and cervical inflammation cited in a 2011 Gao, et al. study, or explain why the endpoints were not selected.

During the Sept. 2 call, Barry McIntyre, of the National Institute of Environmental Health Sciences, said EPA's draft assessment "just discounted the [Gao] study without giving any perspective of why."

In a draft update to the CAAC recommendations, panelists say, "The Gao study is compelling in establishing a relationship amongst BaP exposure, cervical hyperplasia and inflammation," adding that a pair of studies of another endpoint, yielded inconsistent results.

"Therefore, it is unclear as to why EPA would base an RfD on an apical, apparently inconsistent, response as compared to a single study comparing multiple endpoints and routes of administration."

Panelists recommend that EPA either include the Gao study or explain why it is not relevant for risk assessment.

EPA's draft BaP assessment is important for several reasons, including the agency's first-time attempt to calculate a skin cancer risk estimate, something the agency has never included in another IRIS study.

Also, the re-assessment of BaP's risks comes after a 2010 SAB panel pressed EPA to update its 1994 IRIS assessment of BaP before using it as a reference chemical in estimating the toxicity of mixtures of PAHs.

The draft assessment is also one of the first three the relatively new CAAC is peer-reviewing, as part of the agency's efforts to strengthen the IRIS program following a critical review from the National Academy of Sciences in 2011.

In Aug. 26 comments to the SAB, the Utilities Solid Waste Activities Group (USWAG) says the CAAC's concerns regarding EPA's development of the novel skin cancer risk estimate back the group's past criticism that the study lacks adequate scientific backing, and urges the panel to strengthen its calls for EPA to bolster the review. Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 184595)

"USWAG agrees that a robust evaluation of the issues raised in the Draft [SAB] Report will be critical to the development of a scientifically defensible risk assessment," the group says. "USWAG urges the CAAC Panel to increase the firmness with which it advises EPA to revisit its risk assessment. -- Dave Reynolds

Return to Top

News Headline: JUDGES FAULT EPA POLLINATOR FRAMEWORK IN RULING SCRAPPING NEW PESTICIDE |

Outlet Full Name: Inside EPA
News Text: The U.S. Court of Appeals for the 9th Circuit has scrapped EPA's registration of a controversial new pesticide after finding the agency's use of its new pollinator risk assessment framework to review the substance lacked sufficient data on its long-term risks to bee colonies, underscoring advocates' attacks on the limits of the framework.

In a Sept. 10 opinion, 9th Circuit Judge Mary Schroeder and District Judge John Kronstadt vacate and remand the pesticide approval back to the agency due to the data gaps they found in the risk review. Circuit Judge N. Randy Smith signed on to the opinion with a concurrence that also faults the agency for not justifying the registration, and calls on the agency to provide "evidence of the EPA's basis for its judgment and knowledge." Relevant documents are available on InsideEPA.com. See page 2 for details. (Doc. ID: 184720)

The judges had raised doubts about the registration process under the new framework when it heard April 14 oral arguments in Pollinator Stewardship Council et al. v. EPA et al. Advocates in the case contested the agency's May 6, 2013, registration of sulfoxaflor, the agency's first under the new framework, arguing the agency's analysis failed to address potential risks of the substance on the long-term health of bee colonies.

At arguments, for example, Smith raised a variety of reasons why several studies EPA relied on for assessing sulfoxaflor's risks to bees may not be adequate. Smith and Schroeder also raised concerns that the studies did not follow Organisation of Economic Co-operation and Development (OECD) guidelines and may not have used adequate controls.

Schroeder faults the data in the just-issued ruling, saying, "Because the EPA's decision to unconditionally register sulfoxaflor was based on flawed and limited data, we conclude that the unconditional approval was not supported by substantial evidence. . . . Without sufficient data, the EPA has no real idea whether sulfoxaflor will cause unreasonable adverse effects on bees, as prohibited by" the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Environmentalists have long argued that EPA is failing to address persistent risks to bee colonies from systemic pesticides, such as sulfoxaflor, which are taken up into plants' pollen and nectar, and may damage bee colonies through sublethal effects.

EPA is seeking to reduce pesticides' risks to bees as part of a broad federal effort to implement President Obama's June 2014 memo on protecting pollinators by assessing risks to bee health from pesticides and other stressors and by improving habitat. EPA has proposed precluding certain foliar applications to protect bees from acutely toxic pesticides, but has said it will evaluate and address chronic risks using its new pollinator risk assessment framework, finalized last year, during its FIFRA registration and registration review process.

The framework uses a tiered approach in assessing risks to pollinators, including from systemic pesticides, though an agency white paper describing the framework received mixed reviews from a Science Advisory Panel that EPA established to review it, as well as from some environmentalists and states.

In the 9th Circuit challenge, beekeeper groups including the National Pollinator Defense Fund, Inc., American Honey Producers Association and the American Beekeeping Federation argued EPA failed to adequately address the findings of an assessment conducted under the relatively new framework.

They contended that EPA's own analysis using its risk framework showed sulfoxaflor poses "a potential risk for bees" and that Tier 2 field studies were "unable to preclude risk to developing brood or long-term colony health." In addition, Tier 1 of the framework found sulfoxaflor "very highly toxic" to individual bees.

In the opinion, Schroeder says that courts should only back registrations that are supported by "substantial evidence," and that studies manufacturer Dow AgroSciences submitted to support EPA analysis under tier 2 of the framework have "serious limitations."

The limitations include that application rates in certain studies used are much lower than the maximum application allowed in the registration, and that studies provide limited data on potential long-term effects on colony strength, according to the order.

While advocates have long argued EPA risk assessments fail to address potential sublethal effects to bees from pesticide exposure, Schroeder concludes that, "One study did not assess forager mortality, flight intensity, forager behavior, or reference toxicant effects."

Additionally, the opinion says, "Moreover, all of the studies, regardless of application rate, suffered from an additional significant flaw: they provided inconclusive or insufficient data on the effects of sulfoxaflor on brood development and long-term colony health."

While the EPA framework allows industry to submit semi-field studies in place of longer field studies to comply with tier 2, the court says most of the semi-field studies Dow submitted did not follow OECD guidelines. FIFRA does not require studies meet OECD guidelines, though studies that do meet the guidelines satisfy the law, the opinion says.

Schroeder also notes "the precariousness of bee populations" and says vacating and remanding the registration for further review poses less risk of environmental harm than upholding EPA's decision.

"Once the EPA obtains adequate Tier 2 studies, it may conclude that a lower maximum application rate of sulfoxaflor is warranted, or that sulfoxaflor cannot be registered at all because of its effects on brood development and long-term colony strength," the opinion says. -- Dave Reynolds

Return to Top

News Headline: WASTE GENERATOR, PHARMACEUTICAL RULE PROPOSALS PROMPT MIXED REACTIONS |

Outlet Full Name: Inside EPA
News Text: A pair of proposed EPA waste rules that aims to streamline requirements for non-manufacturing hazardous waste generators, especially retailers and healthcare facilities, is drawing initial general support, although environmental attorneys are highlighting concerns that the pharmaceutical waste rule will not deter

a patchwork of more-stringent state standards.

The Retail Industry Leaders Association (RILA) -- which had voiced concern to EPA last year about the Resource Conservation & Recovery Act (RCRA) being an ill-fit for retailers -- is, at first glance, welcoming the rules. State and federal regulators over the past several years stepped up enforcement against large retailers over RCRA violations, prompting the concerns and causing EPA to seek information from the retail sector on waste management practices and how to address retailers' compliance challenges with hazardous waste policies.

The new rule proposals follow through on promises EPA made to address some of retailers' concerns in upcoming waste regulations. The agency on Aug. 31 released two proposed waste rules that in part address these concerns, with the agency saying the rules will give businesses certainty and flexibility. The draft rules are the hazardous waste generator improvements rule, which revises waste generator regulations, and a first-time hazardous waste pharmaceuticals rule (Inside EPA, Sept. 4).

"RILA welcomes these long-awaited and commonsense proposals to ease the burden on retailers who want to implement good waste management practices," RILA vice president of compliance Sue Pifer says in a Sept. 1 statement.

The waste generator rule includes more than 60 changes to current regulations to improve the effectiveness of, and compliance with, the hazardous waste generator program.

The pharmaceutical rule would create sector-specific regulations aimed at improving the management and disposal of hazardous waste pharmaceuticals at healthcare facilities, such as hospitals, long-term care facilities, doctors' offices and pharmacies.

Some pharmaceuticals are currently regulated as RCRA hazardous waste when discarded, but healthcare facilities have reported to EPA difficulties in complying with subtitle C hazardous waste regulations for a number of reasons, the new pharmaceutical rule's preamble says. These include healthcare workers who are not knowledgeable about the RCRA hazardous waste regulations, but are often involved in the implementation of the regulations; difficulty in knowing which of thousands of items in its formulary are hazardous wastes when disposed; and the fact that some active pharmaceutical ingredients are listed as acute hazardous wastes, which are regulated in small amounts.

In response to the proposed rules, major drugstore retailer CVS says, "Overall, the changes applicable to hazardous waste pharmaceuticals should help us streamline our processes for compliance with federal law," according to a written response to questions from CVS Health Director of Environmental Management Pat Perry.

Most of the pharmaceutical rule is "good news," environmental attorney Elise

Paeffgen said in an interview with Inside EPA. But there are particular components of the rule that healthcare facilities, manufacturers and reverse distributers should closely examine and comment on as it affects their business, she says. Under the reverse distribution system, retailers send unsold pharmaceuticals to a central location and then receive financial credit from the manufacturer; the items are then disposed of in an environmentally appropriate manner under RCRA, often incinerated at a licensed facility, according to the industry.

Paeffgen, with Alston & Bird, warned, however, that without a state preemption provision in EPA's pharmaceutical waste rule, the regulation "opens the door" for states to be more stringent, potentially creating a patchwork of regulations affecting pharmaceutical waste.

Under the proposals, states may "retain or add elements that are stricter or broader in scope than the proposed federal rules," Paeffgen said in a written statement. "While the proposed rules do much to ease compliance burdens and level the playing field, the uncertainty of state-by-state regulation in this area remains."

In the interview, she noted that several states have more stringent requirements for pharmaceutical waste. Consistent with those existing policies, she says she thinks those states will further limit reverse distributors. In particular, six states do not allow any expired pharmaceuticals to be sent to reverse distributors. In addition, California has a broader definition of hazardous waste, which will likely also impact pharmaceutical waste, she said.

At the same time, the proposed pharmaceutical rule would create a "tailored, sector-specific regulatory framework" for managing waste pharmaceuticals at healthcare facilities and reverse distributors -- something that Paeffgen, CVS and others are welcoming. Specifically, hazardous pharmaceutical waste generators will manage such waste under a newly created subpart P of part 266 of title 40 of the Code of Federal Regulations, rather than under standard RCRA generator regulations in part 262, EPA says in a question and answer document on the rule.

This means healthcare facilities will avoid becoming a large quantity generator (LQG), with all the related requirements, even if they generate more than 1 kilogram of acute hazardous waste pharmaceuticals in a month, will not have to comply with satellite accumulation area requirements, will not have to specify waste codes on manifests, can accumulate waste pharmaceuticals on sites without a RCRA permit for a longer time -- up to a year -- but will have to meet basic training requirements, according to the question and answer document.

CVS Health's Perry calls the proposed change "very beneficial. Regulating retail under RCRA the same as industrial facilities has been like trying to put the proverbial square peg in a round hole," she says.

Paeffgen said this change would be a "welcome relief" and "reduces compliance

burdens" on healthcare facilities. She notes that under the proposal, healthcare facilities that are small and large quantity generators of hazardous waste would no longer have to count hazardous waste pharmaceuticals toward their total amount of hazardous waste generator calculations, noting that some acute hazardous waste pharmaceuticals -- if more than 2.2 pounds -- currently triggers a larger quantity designation. This exclusion will enable many healthcare facilities to shift to the smaller generator category with a lower regulatory burden, she said.

The rule is tailored to how reverse distributors operate in terms of management and accumulation of waste pharmaceuticals. It would reduce storage and labeling requirements on site for a reverse distributor, Paeffgen said, but she also noted it would create new requirements.

For instance, one significant change is the establishment of a more stringent 90-day accumulation requirement, she said. Under existing requirements for LQGs, a waste pharmaceutical is deemed a "waste" only after the reverse distributor processes the item and makes a determination for obtaining credit from the manufacturer for returning unused items, she said. At that point, the 90-day accumulation period starts; but under the new proposal, the 90-day clock would start as soon as the unused item comes through the door of the reverse distributor, she says. This would effectively prevent most of the "aging" process that reverse distributors often do, wherein they withhold a credit determination until an item has expired, she said.

Perry says CVS uses third-party reverse distributors and that the company wants to "assure that the new rules do not present a barrier to reuse and waste minimization."

Paeffgen also said she agrees with EPA's decision to include a sewer ban on all hazardous waste pharmaceuticals managed by healthcare facilities and reverse distributors, as long as other changes in the rule are adopted. She added in a followup email that "Depending upon how quickly states move to implement the rules, the proposed rule could create a gap of up to a year or more between when the sewer ban becomes immediately effective and when hazardous waste pharmaceutical containers will become exempt from so-called RCRA-empty requirements, which often involve rinsing containers and pouring that rinsate down the drain."

The most profound aspect of the changes to the hazardous waste generator rule being proposed is how wide-ranging the proposal is, Jonathan Wells, also an attorney with Alston & Bird, said in the interview. He advised that any industry needs to scrutinize the rule to determine its effects. In general, it substantially increases the regulatory workload for recordkeeping, training and changes to contingency plans for LQGs, he said.

But he said the proposed rule's allowance for companies to maintain their smaller generator status if they have an episodic generation of waste that exceeds the small quantity limits should be a "big relief" for environmental managers of small generators. For instance, this could be helpful to a retail outlet that has an accidental

spill, he said. But he also noted some concern in certain circumstances that the requirements for dealing with a one-time episodic event are more stringent than for a small quantity generator, for instance in terms of the time period for disposing of waste.

CVS Health's Perry says the episodic waste allowance clarifies the issue and establishes "a bright line for us to follow," which "should be helpful and will allow for better consistency across the U.S."

RILA's Pifer says in a written response to questions that "the spirit of the episodic generation proposal is helpful in allowing retailers to avoid increased burdens of a higher generator status when generating large quantities of waste on a non-recurring basis, for example obsolete, outdated or seasonal product." But she notes that it would only allow retailers to use this measure once a year, and RILA plans to further review the measure to see if this meets retailers' needs. -- Suzanne Yohannan

Return to Top

News Headline: Stormwater problems tackled in Morristown |

Outlet Full Name: Stowe Reporter - Online
News Text: The Lamoille County Conservation District has completed a project to ease stormwater problems and improve water quality at...

Return to Top

News Headline: MWRA board supports water for SouthField |

Outlet Full Name: Enterprise - Online, The
News Text: ...know they can go through the process and not get a no at the end," said Ria Convery, an MWRA spokeswoman. In between, there are...

Return to Top

News Headline: Testing starts Sept. 28 at contaminated Hanover site |

Outlet Full Name: Enterprise - Online, The
News Text: ...with enough mercury, lead and other chemicals to qualify it as a federal Superfund site. Posted signs warn people not to consume fish...

Return to Top

News Headline: Toxic blue-green algae closes Berkeley's Lake Anza |

Outlet Full Name: Advocate Online, The
News Text: ...allowing people to enter the water. Water samples have been sent to the Environmental Protection Agency for additional...

Return to Top

News Headline: You should really stop buying 'antibacterial' soaps |

Outlet Full Name: Eagle-Tribune Online, The
News Text: ...and ones we slather on ourselves -- shouldn't be floating around our environment that way. There's evidence that this kind of...

Return to Top

News Headline: Northern Pass does not want hearings to be postponed |

Outlet Full Name: New Hampshire Union Leader Online
News Text: ...Department of Energy to keep its scheduled public hearings on the draft Environmental Impact Statement for the transmission project...

Return to Top

News Headline: Cottages energy-efficient and more |

Outlet Full Name: Portland Press Herald
News Text: Re: "Letter to the editor: Bridgton cottages not so eco- friendly" (Sept. 1):

As the owner of Main Eco Homes and the developer/builder of The Cottages At Willett Brook, I feel the need to respond to Richard Burt's letter with facts instead of opinion.

n Solar orientation: All roof angles are at an optimal 40 degrees. The solar arrays on the roofs of eight of the first 10 homes will produce just 9 percent less energy than solar arrays on a roof with perfect orientation.

(These "derates" are derived from the National Renewable Energy Laboratory's PVWatts online calculator: pvwatts.nrel.gov/.)

n Energy efficiency: We designed our homes to exceed current codes. They are insulated with a combination of rigid foam, spray foam and cellulose, all superior

insulators.

Exterior walls are sheathed with R-Sheathing, a structural panel insulation board, plus a conservative 2.5 inches of closed-cell spray foam for an airtight R-23-plus wall.

The foam board around the exterior insulates the wood studs, increasing the energy efficiency over a comparable code home. The roof is insulated to R-53 with 15.5-plus inches of blown-in cellulose. Both the foundation walls and underslab are insulated with 2 inches of rigid foam.

n Vinyl siding: The U.S. Green Building Council, the European Commission and the state of California all looked comprehensively at vinyl's pros and cons and concluded the overall impacts were in line with those of other materials and are in fact, better than other alternatives in some applications.

The Cottages At Willett Brook were designed to meet an urgent need for affordable, energy-efficient homes for the aging population in rural Maine.

The goal was to design the homes and site to be ecologically sensitive while also being economical for the target demographic to buy and maintain. Based on the response we've received, we have achieved that goal.

Please feel free to contact me anytime directly at Justin@ mainecohomes.com.

Justin McIver president, Main Eco Homes Bridgton

Buxton history sacrificed with school's demolition

Re: "Preservationists decry demolition of Buxton's historic Hanson School building" (Sept. 11):

Buxton school not saved by the bell. What a story! I have to agree with Meg Gardner, vice president of the Buxton-Hollis Historical Society. What a fiasco!

I started school in the old Bar Mills School. I moved on to the newer Jack Memorial, and then to Buxton Center School, about 100 yards from the Samuel D. Hanson School, where I attended high school for two years before going to Bonny Eagle when School Administrative District 6 began.

I have lots of fond memories of the Hanson School - mainly of the squeaky stairs and the old wooden desks, with the chairs and desks bolted to the floor, and the smaller classes of just Buxton students.

Then-Buxton Code Enforcement Officer Fred Farnham said in June that the building was a fire and safety hazard.

But rather than spending the estimated $170,000 to demolish it, the SAD 6 school board could have spent that money in an attempt to fix it up and save it and then have a fundraiser to complete it.

As it is, they lost all of that money and a historical landmark! Great thinking on their part.

Lindley Deering Raymond

Portland's outdoor concerts may need sounds of silence

Those waterfront concerts sure are loud. They can be heard from the top of Munjoy Hill to Willard Beach - loud enough to make a 40- foot lobster boat pulsate.

One hundred decibels has been measured; 80 is considered harmful to humans.

Time to turn down the volume.

Jeff Aumuller Portland

Hunger knows no season for many at-risk Mainers

September is Hunger Action Month and a good time for all of us to remember those in need. For many Mainers, this is a difficult time of year and, regrettably, too many residents have to eat less or even skip entire meals because they don't have enough money for food.

Maine has the fourth highest rate of hunger in the nation and the highest in New England, with over 200,000 individuals experiencing what is known as food insecurity. The truth is that one person going hungry in Maine is one person too many.

Together, we can make a big difference by donating nonperishable items to local food pantries, which will help many of our friends and neighbors.

In addition, we can help raise awareness about SNAP, otherwise known as the Food Supplement Program. SNAP is one of the country's most effective tools to address hunger and poverty.

In 2011, SNAP kept 4.7 million people out of poverty, including 2.1 million children. Here in Maine, 70 percent of older seniors who are eligible for SNAP are not enrolled, which likely means there are many individuals who are currently unaware of the program.

SNAP is an excellent resource for families and individuals who struggle to put food

on the table. If you think you know someone who might be eligible, they can go to www.maine.gov/mymaineconnection or call 1-800-442-6003 to connect with their local Department of Health and Human Services office.

To learn more about what you can do tohunger for Mainers 50 and older, go to www.drivetoendhunger.org. By taking action now, we can make a difference to at-risk Mainers in the months ahead.

Jane Magnus communications volunteer, AARP Maine Windham

Return to Top